



May 2007

Japan External Trade Organization
WTO and Regional Trade Agreements
Monthly Report

IN THIS ISSUE

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Summary of Reports

United States

Cato Institute Explores “Farm Bill For All Americans”

On April 26, 2007, the Cato Institute hosted a panel on “Freeing the Farm: A Farm Bill for All Americans.” Panelists discussed the September 30, 2007 expiry of the 2002 Farm Bill and different options for rewriting U.S. agricultural trade policy. We review herein their discussion as well as the Cato Institute Center for Trade Policy Studies’ paper on the Farm Bill.

USTR Releases 2007 “Special 301” Report on IPR Enforcement; China, Russia Remain Top Priorities

On April 30, 2007, the Office of the United States Trade Representative (USTR) released its “Special 301” annual report on the adequacy and effectiveness of U.S. trading partners’ intellectual property rights (IPR) protections. The report identifies governments that “need to take stronger actions to combat piracy and counterfeiting.” We review here the main aspects of the “Special 301” annual report.

The “Special 301” annual report can be found at:

http://www.ustr.gov/assets/Document_Library/Reports_Publications/2007/2007_Special_301_Review/asset_upload_file980_11122.pdf

Second US-China Strategic Economic Dialogue Produces Mixed Results

On May 22 and 23, 2007, US and Chinese officials met in Washington, DC for the second Strategic Economic Dialogue (SED II). The SED’s major outcomes included agreements to: (i) expand financing for new US exports to China; (ii) increase passenger and cargo air services between the United States and China; (iii) facilitate group leisure travel from China to the United States; (iv) increase access to China’s domestic financial services and insurance markets; and (v) strengthen IPR enforcement and protection efforts. Although the US and Chinese delegations also discussed currency, the SED II failed to produce any agreements regarding China’s exchange rate management policy or on China’s import ban on all US beef products. Despite the meetings’ progress in a number of areas, Congress will likely view the SED’s failure to deliver outcomes on currency and beef as further failure of the Administration to address the bilateral relationship’s difficult issues.

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United States Highlights

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

- President Bush Announces New Economic Sanctions Against Sudan
- House Committee Approves Legislation on US Investment in Iran
- OIE Formally Grants United States “Controlled Risk” BSE Status
- China Allows RMB to Rise as House Members File 301 Petition on China Currency
- Senate Finance Committee Holds Hearing on US Preference Programs
- USTR Names Special Agricultural Envoy to WTO Negotiations as Current Chief Agricultural Negotiator Returns to Private Sector
- President Bush Extends Sanctions on Syria; U.S. Businesses Urge Senate to Reject Iran Sanctions
- Sen. Brown Introduces Legislation on FTAs and National Security Reviews

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Free Trade Agreements

Congress and Bush Administration Reach Agreement on New US Trade Policy

House Democrats and the Bush Administration have reached an agreement on the inclusion of labor standards in pending and future US bilateral trade agreements, thus allowing for Congressional consideration of the pending US-Peru and US-Panama Free Trade Agreements (FTAs). On May 10, 2007, Speaker of the House Nancy Pelosi (D-CA) along with Democratic and Republican legislators and Bush Administration officials announced the agreement that includes labor rights and other provisions sought by Democrats in FTAs.

KORUS House Holds Briefing on KORUS FTA and Upcoming Legislative Process

On May 24, 2007, the KORUS House hosted a briefing on the US-Korea Free Trade Agreement (KORUS FTA) and upcoming Congressional consideration of the bilateral agreement. **Korea Economic Institute's Director of Congressional Affairs and Trade Troy Stangarone** provided his insight on the KORUS FTA and the issues on which legislators will focus. We review his remarks herein.

Free Trade Agreements Highlights

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

- United States Meets with Asia-Pacific Trade Partners Under Various TIFAS

Multilateral

Multilateral Highlights

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

- WTO Dispute Panel Announces Delay in Airbus-Boeing Ruling; US Blocks EU Request for Panel on "Zeroing"
- WTO Appellate Body Member Janow to Step Down in December
- United States, Japan Agree to Compliance Date in "Zeroing" Dispute
- G-4 Discusses Agriculture, NAMA at London Meeting; Will Continue Discussions in Paris and Brussels in Coming Weeks

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Reports in Detail

United States

Cato Institute Explores “Farm Bill For All Americans”

Summary

On April 26, 2007, the Cato Institute hosted a panel on “Freeing the Farm: A Farm Bill for All Americans.” Panelists discussed the September 30, 2007 expiry of the 2002 Farm Bill and different options for rewriting U.S. agricultural trade policy. We review herein their discussion as well as the Cato Institute Center for Trade Policy Studies’ paper on the Farm Bill.

Analysis

On April 26, 2007, the Cato Institute hosted a panel on “Freeing the Farm: A Farm Bill for All Americans.” Panelists discussed the September 30, 2007 expiry of the 2002 Farm Bill and different options for rewriting U.S. agricultural trade policy. Director of the Cato Institute's Center for Trade Policy Studies Daniel Griswold and Cato trade policy staff member Sallie James offered their views on how Congress could amend the Farm Bill to decrease costs for U.S. consumers. David Orden, Senior Research Fellow at the International Food Policy Research Institute (IFPRI) and Ambassador Clayton Yeutter, former Secretary of Agriculture and United States Trade Representative (USTR), also provided their views on the Farm Bill.

- **Sallie James, Cato Institute Trade Policy Analyst** provided an overview of the Cato paper titled “Freeing the Farm: A Farm Bill for All Americans.” According to James and Griswold, U.S. agricultural policy is interventionist and expensive, and over the last 20 years, the opportunity cost to American consumers and taxpayers of supporting U.S. agricultural producers has totaled almost \$1.7 trillion. She also opined that Farm Bills are “closed shops” conducted by Congress behind closed doors with little regard for American taxpayers. James thus calls for U.S. lawmakers to draft a new Farm Bill that addresses “market-distorting programs” and replaces them with the following elements:
 - (i) **General guidelines.** Any changes to U.S. farm policy must: (i) be compatible with the United States’ World Trade Organization (WTO) commitments; (ii) significantly decrease market distortions; (iii) challenge the “implied compulsion to spend”; and (iv) ensure that “markets are freer, that U.S. companies are less vulnerable to litigation, and that taxpayers and consumers bear less of a burden for supporting a chosen few [U.S. agricultural producers].”

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- (ii) **Buyout of commodity support.** Congress could consider a buyout program to take the place of subsidies and price supports. Through this program, the government pays current U.S. agricultural producers a lump sum with minimal strings attached in exchange for the permanent elimination of all current agricultural subsidies, quotas, tariffs, and other forms of agricultural support. The Cato Institute proposes that Congress offer an up-front, total buyout of commodity programs totaling \$45 billion (*i.e.*, 70 percent of the present discounted value of the next seven years of farm payments) or allocate total payments of \$15 billion per year for the next three years or \$9 billion per year for the next five years. The buyout payments to agricultural producers would be paid into a special account in a lump sum that could then be used as a self-insurance program for agricultural producers that would help their “transition to a fully liberalized market for farm products.” In this way, U.S. agricultural producers would still be afforded some insurance in face of fully-dismantled agricultural support programs.
- (iii) **Trade barrier removal.** Congress should also reduce U.S. trade barriers and ensure that domestic farm policy reform minimizes negative effects on taxpayers.
- (iv) **Nutrition programs in the Farm Bill.** The Cato report notes that the U.S. Department of Agriculture’s (USDA) Food, Nutrition, and Consumer Services federal nutrition assistance programs account for more than half of USDA’s budget and are covered the Farm Bill. James suggests that Congress decouple legislation to administer and to fund these programs from the Farm Bill to prevent lawmakers from using the nutrition programs as another form of support to agricultural producers.
- (v) **Energy.** According to the Cato report, “promoting and subsidizing commercially unviable energy is really just another taxpayer funded welfare program for farmers.” James and Griswold thus suggest that provisions for government support for research into biofuels and other alternative fuels should not be included in agricultural policy and should instead be considered under energy policy to prevent biofuels research from becoming “a new and ingenuous way of responding to politically powerful farm lobby groups and marketing that response as an exercise in energy independence or environmental responsibility.”

James concluded that these policy suggestions would ensure three positive results: (i) “repeal of the underlying enabling legislation that maintains a sense of entitlement to farm support payments”; (ii) create a system of “enforceable contracts” that would prevent U.S. agricultural producers from relying on federal funds; and (iii) ensure that the reforms are in line with U.S. WTO obligations.

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- **David Orden, IFPRI Senior Research Fellow**, stated that the Cato-proposed buyout program is a feasible option for Congress to consider because former smaller buyouts proved successful: according to Orden and the Cato report, the government bought out tobacco farmers' quota rights in 2004, and the rents that accrued to peanut growers from production quotas were bought out at a cost equivalent to 24 years of rents discounted at 5 percent. Orden noted, however, that in order for the buyout program to be successful, agricultural producers would have to support fully such an initiative. Orden also noted that a buyout program would end market distorting agricultural policies and would limit agricultural producers from further requesting agricultural support.
- **Clayton Yeutter, former Secretary of Agriculture and USTR**, opined that Congress must use the 2007 Farm Bill as an opportunity to reform flawed U.S. agricultural programs, and that changes in agricultural pricing should lead to changes in agricultural policy. Yeutter opined that Congress should not just "tweak" the 2002 Farm Bill and then approve it. According to Yeutter, if Congress approves a Farm Bill similar to the 2002 version, the United States will likely face challenges from U.S. trading partners at the WTO. Yeutter called on Congressional committees to draft a new Farm Bill that would avoid challenges from U.S. trading partners and minimize trade distortions. He also opined that the current Farm Bill's benefits are designed for "big farmers" and are not designed for small U.S. agricultural producers. He stated that the United States must be careful to draft the 2007 Farm Bill so as not to appear as a "villain" to U.S. trading partners, which in turn would make the United States vulnerable to WTO challenges.

Outlook

The Farm Bill will face substantial scrutiny in Congress over the coming months. The Bush Administration has already provided Congress with its proposal for the 2007 Farm Bill, and although the domestic response has been mixed, U.S. trading partners have expressed their unhappiness with the Administration's suggestions. Analysts indicate that the proposal contains several new features, but overall subsidy levels are similar to those of the 2002 Farm Bill. The Cato-proposed buyout would be a radical change for the Farm Bill, and it is unlikely that Congress would seriously consider the option: the U.S. agriculture lobby is too powerful presence and significant cuts in subsidy programs are unlikely due to the intense lobbying efforts from the U.S. agriculture community. In the end, Congress will have to balance U.S. farmers' desires with U.S. trading partners' demands (and U.S. multilateral obligations) in drafting a 2007 Farm Bill. These pressures will likely dictate that the Farm Bill's programs be altered, but that its overall subsidy levels remain near previous levels.

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USTR Releases 2007 “Special 301” Report on IPR Enforcement; China, Russia Remain Top Priorities

Summary

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The “Special 301” annual report can be found at:

http://www.ustr.gov/assets/Document_Library/Reports_Publications/2007/2007_Special_301_Review/asset_upload_file980_11122.pdf

Analysis

On April 30, 2007, USTR released its “Special 301” annual report on the adequacy and effectiveness of U.S. trading partners’ IPR protections. The report identifies governments that “need to take stronger actions to combat piracy and counterfeiting.” China and Russia’s IPR enforcement and monitoring feature prominently throughout the report, as they did in the 2006 “Special 301” report. Upon the report’s release, USTR Susan Schwab stated that the United States “must defend ideas, inventions and creativity from rip off artists and thieves” and that the 2007 Special 301 report “underscores the Administration’s scrutiny in pinpointing challenges in protecting IPR and signals to our trading partners that effective IPR protection will remain a critical focus in U.S. policy.”

I. Background

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994) (“Special 301”), USTR must annually identify those countries that deny adequate and effective IPR protections. According to the report, “countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact on the relevant U.S. products” are designated as “Priority Foreign Countries.” Priority Foreign Countries are potentially subject to an investigation under the Section 301 provisions of the Trade Act of 1974, under which the United States may impose trade sanctions against foreign countries that maintain acts, policies and practices that violate, or deny U.S. rights or benefits under, trade agreements, or are unjustifiable, unreasonable or

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discriminatory and burden or restrict U.S. commerce. As part of its Special 301 duties, USTR has created a “Priority Watch List” and “Watch List.” Placement of a trading partner on either list indicates that particular IPR-related problems – including protection, enforcement and market access – exist in that country. Countries that have been placed on the Priority Watch List are “the focus of increased bilateral attention concerning the problem areas.” Additionally, under Section 306, USTR monitors a country’s compliance with bilateral intellectual property agreements that are the basis for resolving an investigation under Section 301. USTR may apply sanctions if a country fails to “satisfactorily” implement an agreement.

II. 2007 Special 301 Report

The 2007 “Special 301” annual review examines the adequacy and effectiveness of IPR protection by U.S. trading partners. USTR listed 43 countries on the 2007 report’s Priority Watch List, Watch List or Section 306 Monitoring, a decrease from the 48 countries included in the 2006 Special 301 report’s Priority Watch List, Watch List or Section 306 Monitoring.

A. Positive Progress

USTR notes that there has been “significant positive progress on IPR protection and enforcement in several countries in 2006” and accordingly, USTR improved the “Special 301” status of these countries or removed them from the Watch List because of progress on IPR issues in 2006. USTR has removed the following countries from the Watch list due to improvements in IPR enforcement efforts: **the Bahamas, Bulgaria, Croatia, the EU, and Latvia**. USTR has also moved **Belize** and **Brazil** from the Priority Watch List to the Watch List due to improvements in IPR enforcement efforts.

B. STOP! Initiative

The report notes that USTR is “actively engaged” in implementing the Bush Administration’s Strategy Targeting Organized Piracy (STOP!) initiative. President Bush announced the initiative in October 2004 in an effort “to bring together the federal government, private sector and trade partners to take concerted action in cracking down on piracy and counterfeiting.” As part of this effort, USTR plans to introduce new initiatives to “improve the global intellectual property environment that will aid in disrupting the operations of pirates and counterfeiters.”

C. Priority Watch List Country: China

USTR states that China will remain on its Priority Watch List and remain subject to Section 306 monitoring. USTR recognizes the Chinese government’s efforts to protecting IPR but notes that “in spite

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of these efforts, the shared goal of significantly reducing IPR infringement throughout China has not yet been achieved.”

USTR notes that China has made some IP progress. According to the report, China completed its accession to the World Intellectual Property Organization (WIPO) Internet Treaties and has implemented new rules and regulations that require computers to be pre-installed with licensed operating system software. USTR will continue its bilateral dialogue and cooperation efforts with the Chinese government as well as put serious efforts into its joint work with China on innovation policy and IP protection strategies.

The report still finds that piracy and counterfeiting in China remained unacceptably high in 2006. U.S. copyright industries estimate that 85-93 percent of all copyrighted material sold in China in 2006 were pirated and trade in pirated optical discs continues to be problematic. USTR is also concerned with the piracy of books and journals and end-user piracy of business software as well as Internet piracy.

USTR believes that inadequate IPR enforcement is the key factor that contributes to China's increased piracy and counterfeit rates. According to the report, Chinese IP enforcement efforts are weak because of poor coordination among Chinese government ministries and agencies, corruption, high thresholds for initiating investigations and prosecuting criminal cases, lack of training, and inadequate and non-transparent processes. USTR indicates that complex administrative procedures, bureaucratic local authority IP efforts, the lack of criminal liability for certain acts of copyright infringement, the profit motive requirement in copyright cases, the requirement of identical trademarks in counterfeiting cases, and the absence of minimum, proportionate sentences and clear standards for initiation of police investigations in cases where there is a reasonable suspicion of criminal activity are all factors that contribute to China's weak IP enforcement.

D. Priority Watch List Country: Russia

Russia remains on the report's Priority Watch List in 2007 and USTR will conduct an Out-of-Cycle Review to monitor progress on Russia's IPR issues. U.S. copyright industries report that they lost close to \$2.1 billion in 2006 due to copyright piracy in Russia and that Russia's optical disc production capacity “continued to be far in excess of domestic demand, with pirated products apparently intended not only for domestic consumption, but also for export.” The report also states that Internet piracy remains an ongoing problem.

USTR states that “poor enforcement of IPR in Russia is a pervasive problem” and that the Russian government's prosecution and adjudication of IP cases is sporadic and inadequate and offers little transparency. USTR also believes that Russia's enforcement and prosecution of IP cases is weak. The

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report further states that Russia continues to deny national treatment for the protection of geographical indications and that although Russia committed in the U.S.-Russia IPR bilateral agreement¹ to implement Article 39.3 of the WTO Trade Related Aspects of Intellectual Property (TRIPs) Agreement to protect against unfair commercial use for data generated to obtain marketing approval, Russia does not provide such protection for pharmaceutical products.

The report states that Russia has made some improvements to its IP regime. In 2006, the Russian Duma adopted Part IV of the Civil Code, which replaces most of Russia's IPR legislation with a single law. Part IV and implementing regulations to be developed in 2007 will go into effect on January 1, 2008. Nonetheless, USTR notes that Part IV still contains provisions that raise serious concerns regarding consistency with WTO and other international agreements. The Russian government has pledged in the IPR bilateral agreement to ensure that Part IV and its other IPR measures will be fully consistent with the TRIPs Agreement upon Russia's accession to the WTO. In the meantime, the United States will continue to work with Russia on the enforcement of IPR and Russia's compliance with its bilateral obligations through the United States – Russia Bilateral Working Group on Intellectual Property Rights and the Out-of-Cycle Review. USTR is also reviewing Russia's status as a beneficiary country under the U.S. Generalized System of Preferences (GSP) program.

E. Other Priority Watch List Countries

USTR also placed several other countries on its 2007 Priority Watch List:

- **Argentina.** The report states that Argentina has made some progress in decreasing its backlog of patent applications but adds that Argentina still does not provide adequate protection against unfair commercial use for data generated to obtain marketing approval. Copyright piracy also remains a significant problem in Argentina and USTR encourages stronger IPR enforcement actions in light of increased cooperation between Argentina's enforcement authorities and the U.S. copyright industry.

¹ On November 10, 2006, the United States and Russia successfully concluded a bilateral agreement as part of Russia's accession to the World Trade Organization (WTO). Russia and the United States signed the bilateral deal on November 19 on the sidelines of the Asia-Pacific Economic Cooperation (APEC) summit in Hanoi. The bilateral agreement establishes an enforcement mechanism for intellectual property protection, as well as rules for increased bilateral market access for goods and services. As part of the IPR bilateral agreement, the Government of Russia has committed to fight optical disc and Internet piracy, protect against unfair commercial use for pharmaceutical test data, deter piracy and counterfeiting through criminal penalties, strengthen border enforcement, and bring Russian laws into compliance with WTO and international IPR norms.

- **Chile.** USTR elevated Chile from the Watch List to the Priority Watch List at the conclusion of an Out-of-Cycle Review in January 2007. Copyright piracy remains high and digital piracy continues to grow. The report states that Chile suffers from other several IP-related problems, including: (i) inadequate protection against unfair commercial use for data generated to obtain marketing approval; (ii) insufficient coordination between Chile's health and patent authorities to prevent the issuance of marketing approvals for patent-infringing pharmaceutical products; (iii) continued copyright piracy and trademark counterfeiting; and (iv) the need for greater efforts by the Chilean government to meet standards set out in the TRIPs Agreement, the United States – Chile Free Trade Agreement (FTA), and other bilateral and multilateral agreements. The United States will continue to work with Chile on the implementation of its IPR commitments in the FTA. USTR urges Chile to improve its copyright and trademark enforcement as well as amend Chile's IPR legislation to bring Chile's IPR regime into line with its multilateral and bilateral commitments
- **India.** USTR notes that India will remain on the Priority Watch List in 2007 because of inadequate IPR protection and enforcement. According to the report, piracy of copyrighted works remains problematic in India and India's criminal IPR enforcement regime is weak "with improvements needed in the areas of expeditious judicial dispositions for copyright and trademark infringement, border enforcement against counterfeit and pirated goods, police action against pirates and counterfeiters, and imposition of deterrent sentences for IPR infringers." USTR urges India to improve its IPR regime through stronger copyright, trademark, and patent protection as well as protection against unfair commercial use for data generated to obtain marketing approval. USTR also urges India to implement the WIPO Internet Treaties, strengthen copyright laws, and improve its IPR enforcement system.
- **Thailand.** USTR elevated Thailand from its Watch List to its Priority Watch List in 2007. In its report, USTR notes that over the past year, there has been an overall deterioration in IPR protection and enforcement in Thailand and that although the United States appreciates Thai law enforcement officials' continued actions against infringing IPR activity, "these efforts appear not to have had a measurable effect on piracy and counterfeiting rates, which remain unacceptably high" in Thailand. USTR believes that Thailand's legislation governing optical disc media is weak and does not adequately address the large scale of pirated disc production. The report also states that the Thai government has not addressed book piracy, cable and signal theft, and entertainment and business software piracy in a meaningful way. In addition, USTR notes that in late 2006 and early 2007, "there were further indications of a weakening of respect for patents, as the Thai government announced

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decisions to issue compulsory licenses for several patented pharmaceutical products.” USTR acknowledges Thailand’s ability to issue compulsory licenses in accordance with WTO rules but believes that “the lack of transparency and due process exhibited in Thailand represents a serious concern.”

F. Watch List Countries

USTR placed several countries on its 2007 Watch List, including:

- **Brazil.** USTR lowered Brazil from its Priority Watch List to its Watch List in 2007. In its report, USTR notes that Brazil has made considerable progress in enhancing copyright enforcement and that Brazil’s National Anti-Piracy Council is “increasingly recognized as a model of public-private collaboration in the area of IP enforcement.” USTR also commends the Brazilian government’s national action plan to address piracy and IP crimes. The report notes that piracy and counterfeiting levels remain high and that criminal prosecutions often lag police actions but adds that Brazil’s “vigorous efforts” have created a healthy dialogue between the United States and Brazil on IP issues. The report does list some concerns. Including the uncertain role of Brazil’s health regulatory agency in the patent approval process as well as the Brazilian government’s consideration of the use of compulsory licensing on patented pharmaceutical products.
- **Colombia.** Colombia will remain on the Watch List in 2007 although USTR commends Colombia for its actions to combat IPR violations and for amending its Criminal Code in 2006 to increase sentences for copyright infringement. Nonetheless, the report states that copyright piracy remains high and that efforts to combat piracy through raids and other enforcement measures are “hampered by a judicial system that fails to prosecute cases actively or to issue deterrent criminal sentences.” USTR urges Colombia to improve its border enforcement as well as implement high standards of IPR protection through its legal structures and enforcement practices.
- **Indonesia.** According to the report, Indonesia will remain on the Watch List in 2007 although USTR did lower it from the Priority Watch List to the Watch List at the conclusion of an Out-of-Cycle Review in November 2006. USTR commends Indonesia for its continued IPR enforcement efforts as well as its efforts to combat retail piracy and implement optical disc regulations to combat pirate production in optical disc factories. Indonesia’s recently-formed Information Communication Technology National Team as well as its National Task Force for IPR Violation Prevention have also been positive developments although USTR notes that neither of these bodies ha taken specific action against IPR violations in Indonesia. Some problems still exist. U.S. copyright industries report that high piracy

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rates continue to exist in Indonesia and U.S. pharmaceutical industries report that Indonesia does not provide effective protection against unfair commercial use for data generated to obtain marketing approval. USTR urges Indonesia to continue enforce its IPR laws effectively and in a deterrent manner against piracy and counterfeiting.

- **Malaysia.** USTR will maintain Malaysia on its Watch List in 2007. The report notes that “Malaysia showed a solid commitment to strengthening IPR protection and enforcement [in 2006], but still has some serious deficiencies that need attention.” USTR commends the Malaysian government’s raids against pirate optical disc production facilities and the seizure of pirate goods and machinery used to produce pirate materials as well as its revocation to renew licenses for pirate optical disc facilities, which resulted in the closure of at least eleven optical plants in 2006. USTR, however, urges Malaysia to continue its IPR enforcement efforts and to ratify and fully implement the WIPO Internet Treaties as well as provide effective protection against unfair commercial use for data generated to obtain marketing approval.
- **Mexico.** Mexico will remain on the Watch List in 2007 and USTR notes that the Mexican government has made some improvements in IPR enforcement in 2006, including increased raids, arrests, and seizures of counterfeit and pirated goods. USTR remains concerned that Mexican courts have not imposed convictions and deterrent sentences for pirates and counterfeiters. USTR is also concerned that Mexico has inadequate protection against unfair commercial use for data generated to obtain marketing approval and notes that the increase in counterfeit pharmaceuticals is problematic.
- **Peru.** USTR will maintain Peru on its Watch List in 2007. According to the report, the Peruvian government made some IPR improvements in 2006 but that despite these improvements, numerous IPR problems remain, including high levels of copyright piracy. USTR encourages Peru to conduct more raids and seizures and ensure that arrests of IPR infringers result in convictions and the imposition of deterrent sentences that include imprisonment. USTR will work with Peru to ensure implementation of Peru’s IPR commitments under the United States – Peru Trade Promotion Agreement (PTPA), in which Peru has committed to implement high standards of IPR protection through its legal structures and enforcement practices.
- **South Korea.** USTR will maintain Korea on the Watch List in 2007 although USTR commends the Korean government’s IPR commitments that Korea agreed to undertake under the U.S. – Korea Free Trade Agreement (KORUS FTA) concluded in April 2007. USTR reports that Korea has agreed to “considerably strengthen its IPR protection and enforcement regimes” in the areas of patents,

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trademarks, copyrights, and protection against unfair commercial use for data generated to obtain marketing approval. USTR hopes that these commitments will lead to an improvement IPR protection as well as a reduction in piracy and counterfeiting in the Korean market.

Outlook

Addressing weak IPR protection and enforcement, particularly in China and Russia, continues to be one of the Bush Administration's top priorities. The Special 301 Report shows positive progress in many countries but still includes numerous counterfeiting and piracy problems that indicate a critical need for stronger intellectual property protection in several countries. This year's report places special emphasis on IPR violations related to pharmaceutical products, indicative of increased efforts by the U.S. pharmaceutical lobby to include its concerns – especially compulsory licensing of pharmaceutical products – in the Special 301 report. Thailand's inclusion on the Priority Watch List following its November 2006 issuance of compulsory licenses on AIDS and HIV drugs and USTR's note on Brazil's consideration of the use of compulsory licenses likely indicate that USTR will closely follow this issue for the remainder of the year.

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Second US-China Strategic Economic Dialogue Produces Mixed Results

Summary

On May 22 and 23, 2007, US and Chinese officials met in Washington, DC for the second Strategic Economic Dialogue (SED II). The SED's major outcomes included agreements to: (i) expand financing for new US exports to China; (ii) increase passenger and cargo air services between the United States and China; (iii) facilitate group leisure travel from China to the United States; (iv) increase access to China's domestic financial services and insurance markets; and (v) strengthen IPR enforcement and protection efforts. Although the US and Chinese delegations also discussed currency, the SED II failed to produce any agreements regarding China's exchange rate management policy or on China's import ban on all US beef products. Despite the meetings' progress in a number of areas, Congress will likely view the SED's failure to deliver outcomes on currency and beef as further failure of the Administration to address the bilateral relationship's difficult issues.

Analysis

I. Background

The United States and China announced the SED's creation in a September 20, 2006 joint statement. The two countries established the dialogue as a high-level forum in which US and Chinese representatives could meet biannually to "focus on bilateral and global strategic economic issues of common interests and concerns" and to supplement existing bilateral dialogue mechanisms such as the US-China Joint Commission on Commerce and Trade (JCCT). The two parties held the first meeting of the SED (SED I) on December 14-15, 2006 in Beijing and discussed a number of bilateral economic issues including macroeconomic policies, trade and investment barriers, and intellectual property rights (IPR). The parties also agreed to cooperate on energy and environmental initiatives. Although the SED I meeting did not produce any definite timetables for solving US concerns such as China's currency policy or IPR enforcement mechanisms, US officials emphasized the dialogue's importance as a venue for exchanging opinions on key concerns and reaching a consensus upon which the two parties may later build solutions. Following SED I's conclusion, however, many members of Congress criticized the Administration's approach to US-China bilateral economic relations as too focused on "dialogue" and unable to produce results on problem issues such as trade balances, currency, IPR and China's alleged subsidization of domestic industries. Although the Administration has sought to "toughen" its stance on

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China, including the filing in 2007 of three requests for World Trade Organization (WTO) dispute settlement consultations regarding subsidies, IPR and market access, Congress continues to threaten to take action if the Administration does not become more aggressive, and it is considering a number of bills that would target China's alleged unfair currency practices.

II. SED II Outcomes

On May 22-23, Chinese Vice Premier Wu Yi led a delegation of 15 ministers and agency representatives to Washington, DC where they met with a group of 17 US cabinet-level officials for the SED II. The two delegations discussed a number of issues including market access, financial services liberalization, energy and the environment and IPR and produced a number of "deliverables" in these areas.

The Export-Import Banks of the United States and China signed two agreements to help **finance new US exports to China**. The agreements include a memorandum of understanding (MOU) on the provision of long-term credit for most US export transactions over \$20 million and an agreement that would expedite funding for multiple export transactions of US medical equipment to Chinese hospitals. During SED I, the United States and China reached a similar agreement that provided medium-term credit for US export transactions under \$20 million.

The United States and China agreed to expand **passenger and air cargo services** between the two countries. Starting with one new flight in 2007, the agreement will increase gradually the number of daily passenger flights from the United States to China from 10 to 23 by 2012. China also agreed to remove by 2011 all government limits on the number of cargo flights and cargo carriers, granting US cargo carriers "virtually unfettered" access to China according to a Treasury Department statement. The two countries also signed a declaration of intent to begin negotiations to expand **Chinese group travel to the United States**.

China agreed to a number of measures that will increase access to its domestic market for **financial services**. These measures include an increase in the quota for Qualified Foreign Institutional Investors (QFIIs) to \$30 billion from \$10 billion. China introduced the QFII program in 2002 to allow foreign fund managers and other investment institutions that receive approval from the State Administration of Foreign Exchange Control to invest in domestic securities markets within a designated quota. China will increase the amount that individual QFIIs may invest in these markets and help balance bilateral trade and investment flows by allowing more US investment in China. China also agreed to issue licenses to new foreign securities companies from the second half of 2007 and to expand the range of approved activities to include brokerage, proprietary trading and fund management by SED III. China had restricted the entry

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of new foreign securities companies since 2006. China also will immediately allow foreign-invested banks to offer RMB-denominated debit and credit card services under their respective names, but it will continue to restrict their processing of payments, which must go through China Union Pay.

On **insurance**, the China Insurance Regulatory Commission (CIRC) will by August 1, 2007 issue decisions on branch to subsidiary conversion applications that have been pending for longer than one year. Chinese regulations require CIRC to make such decisions within six months of receiving an application, and China agreed during SED II to adhere to this requirement. China also agreed to restructure the application process for financial institutions to provide enterprise annuities by SED III.

On **energy and the environment**, China and the United States agreed on several cooperative efforts that aim to improve energy efficiency and security and to protect the environment. These include cooperation through 2012 on 15 large-scale projects to capture and utilize methane gas leaked from Chinese coal mines, promoting commercial use of clean coal and carbon capture technologies and joint efforts in the Doha Round to reduce and eliminate barriers to trade in environmental goods and services. These cooperative efforts will likely benefit both the United States, which will gain from increased exports of environmental goods and services, and China, which seeks to lessen the adverse environmental impact of its rapid economic development.

On **IPR**, the United States and China signed a Memorandum of Cooperation on IPR Enforcement, under which they agreed to exchange information regarding the seizure of pirated or counterfeit goods and to enhance dialogue between the two countries' customs agencies. The Administration has increased pressure on China to strengthen its IPR protection and enforcement measures, including an April 10, 2007 request for WTO dispute settlement consultations (DS 362) on China's IPR enforcement.

Although the two parties also discussed **currency** issues during the meeting, they did not produce any deliverables regarding China's exchange rate regime. Many members of Congress have grown increasingly critical of China's foreign exchange policy, which they allege deliberately undervalues the RMB and grants an unfair advantage to Chinese exports.

The two parties also failed to reach an agreement on China's ban of **US beef** imports, despite the World Animal Health Organization's (OIE) May 22 formal designation of the United States as a "controlled risk" country for bovine spongiform encephalopathy (BSE). China has maintained a ban on imports of all US beef products since December 2003, when the first case of BSE was discovered in the United States.

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III. Other Meetings

Following the SED's conclusion, the Chinese delegation met with key members of both chambers of Congress, including House Speaker Rep. Nancy Pelosi (D-CA) and Senate Finance Committee Chair and Ranking Member Sens. Max Baucus (D-MT) and Charles Grassley (R-IA). Baucus, Grassley and other members of the Finance Committee discussed with the delegation issues including currency, China's ban on US beef and IPR protection/enforcement. Baucus stated that he urged the delegation to resolve these issues by addressing "more aggressively" China's "undervalued" currency, lifting its "unscientific" ban on beef imports, and strengthening IPR enforcement. Grassley stated that it was in both countries' interests for China to "move more quickly to respond to these concerns." House Ways and Means Committee Members also urged the Chinese delegation to address US concerns. In a May 23 letter to Vice Premier Wu Yi, Committee Members stated that they hoped China would take "immediate steps" to address issues including its "massive and constant interventions in the currency markets," its failure to eliminate "trade-distorting" subsidies as per its WTO commitments, and its "inability to enforce intellectual property rights."

On May 24, Wu also met with President Bush to discuss issues of importance to bilateral economic relations. Bush welcomed the agreements on new air routes and tourism, but expressed his disappointment with China's continued ban on US beef and on the bilateral trade balance. Bush emphasized that the United States values its relationship with China but added that "the \$233 billion trade deficit must be addressed. And one way to address it is through currency evaluations [sic]."

Outlook

Although the SED II achieved deliverables in a number of areas, Congress will likely cite its failure to address difficult issues such as beef and currency as further justification for coarse rhetoric and threatened legislative action against China's alleged unfair trade practices. Congress is already considering a number of bills that would take such action, and other legislation appears likely. For example, House Ways and Means Trade Subcommittee Chairman Sander Levin (D-MI) stated recently that he expects the submission of a bill that would allow the United States to treat currency manipulation as a countervailable subsidy. (On March 30, the Department of Commerce (DOC) announced a decision to apply U.S. countervailing duty (CVD) law to imports of Chinese coated free sheet (CFS) paper. Despite the petitioner's allegations in the CFS CVD petition that Chinese currency manipulation was an illegal subsidy, DOC refused to investigate the issue, stating that "petitioner has not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with

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reasonably available information.”) Also, Sens. Baucus, Grassley, Chuck Schumer (D-NY) and Lindsay Graham (R-SC) will likely submit in coming months a WTO-compliant bill that would target China’s currency policy.

Members of Congress also have recently taken several non-legislative actions related to China trade. On May 29, House Ways and Means Committee Chair Rep. Charles Rangel (D-NY) requested that the International Trade Commission (ITC) investigate “causes of the US-China trade imbalance” and determine what, if any, role “forms of government intervention to promote investment, employment and exports” play in contributing to this alleged imbalance. Rangel’s request follows a Section 332² investigation the ITC is already conducting under a fall 2006 Ways and Means’ request to examine causes for the recent growth in US-China trade. On May 17, 42 House Members submitted a Section 301 Petition to request that the Administration take action to end the Chinese government’s alleged undervaluing and manipulation of its currency. The Office of the United States Trade Representative (USTR) is unlikely to accept the Petition, which could require it to take action against China for denying the United States’ rights under trade agreements or for restricting US commerce, but the request is further evidence of Congress’ attention towards Chinese economic and currency policies. Despite this attention, it remains unclear what form Congressional action against China might take, if any at all. Members have introduced Congressional legislation aimed at Chinese currency policy for the last several sessions, but the bills have never advanced out of committee. Moreover, legislation that would mandate the imposition of countervailing duties (CVDs) against Chinese imports was supposedly destined for April or May votes in both chambers but has yet to make it to either floor. Thus, it remains to be seen whether the apparent increase in anti-China rhetoric in Congress will translate into concrete Congressional action or remain merely a political and rhetorical tool that congressional members use to placate key constituencies and attempt to influence Bush Administration trade policy.

² Section 332 of the Tariff Act of 1930 mandates the ITC to conduct general fact-finding investigations on any matter involving tariffs or international trade, including conditions of competition between U.S. and foreign industries. Section 332 authorizes the President or the Chairman of either the Senate Finance Committee or the House Ways and Means Committee to request that the ITC conduct these general investigations.

United States Highlights

President Bush Announces New Economic Sanctions Against Sudan

On May 29, 2007, President Bush announced new economic sanctions against Sudan and directed the US Department of Treasury to tighten existing economic sanctions due to the country's continued involvement in Darfur. Under the sanctions, the Treasury Department will bar 31 additional companies owned or controlled by Sudan from participating in the US financial system. Treasury will add these companies to its current list of Sudanese companies subject to US sanctions. According to Secretary of the Treasury Henry Paulson, the 31 Sudanese companies "supplied cash to the Bashir regime, enabling it to purchase arms and further fuel the fighting in Darfur." He noted that "denying these companies access to the US and international financial system [will] make it harder for the Government of Sudan to pursue its deadly agenda." Among the designated Sudanese companies are GIAD Industrial City, which has supplied armored vehicles to the Sudanese government for military operations in Darfur; Sudatel, the national telecommunications company; and five firms in the petrochemical sector, including Advanced Petroleum Company, RAM Energy Company, Bashaier, Hi-Tech Petroleum Group, and Hi-Tech Chemicals.

President Bush also imposed economic sanctions against four Sudanese individuals, including the Head of Sudan's Military Intelligence and Security, Sudan's Minister for Humanitarian Affairs (who has been accused of war crimes by the International Criminal Court in the Hague), and the leader of the Justice and Equality Movement (JEM), a rebel group that has refused to sign the Darfur Peace Agreement. Similar to the sanctions on the Sudanese companies, the sanctions on these individuals bar them from conducting business with US citizens or companies. Treasury will freeze any assets owned by the Sudanese companies or individuals if the assets come into the possession of a US citizen or institution.

Reaction to President Bush's announcement was generally positive. House Majority Leader Steny Hoyer (D-MD) stated that the sanctions are "a positive step" and opined that the Bush Administration should include the Darfur genocide in all US bilateral dealings, "particularly with China, Sudan's largest trading partner." Rep. Hoyer also encouraged US allies "at the UN, including the European Union, to follow through with similar sanctions." National Foreign Trade Council (NFTC) President Bill Reinsch lauded the sanctions and opined that "focusing an economic bulls-eye on Sudanese officials, rogue individuals and government-run companies [demonstrates that] the Administration has offered smarter, tougher and more targeted sanctions that have the potential to help the people of Darfur." The United Kingdom also backed

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the Bush Administration's sanctions and British officials stated that they "fully support US efforts to address the desperate situation in Darfur."

House Committee Approves Legislation on US Investment in Iran

On May 23, 2007, the House Financial Services Committee approved by voice vote the Iran Sanctions Enabling Act of 2007 (H.R. 2347). This legislation is intended to "prevent investment in companies with investments of \$20 million or more in Iran's energy sector." Chairman of the House Financial Services Committee Barney Frank (D-MA) and Chairman of the House Foreign Affairs Committee Tom Lantos (D-CA) introduced H.R. 2347 on May 16, 2007.

The proposed legislation would:

- Require the Executive Branch to publish a list every six months in the Federal Register of those companies that have an investment of more than \$20 million in Iran's energy sector;
- Require the Executive Branch to publish a list of investments in, or assistance to, Iran's energy sector by the United Nations, the World Bank, and the International Monetary Fund;
- Authorize state and local governments to divest the assets of their pension funds and other funds under their control from any company on the list;
- Enable managers of mutual funds and corporate pension funds who divest from companies on this list to access a special litigation defense fund, so that they may combat any civil actions brought by shareholders relating to the divestments; and
- Establish a Sense of the Congress resolution that urges the government's Thrift Savings Plan to offer a terror-free investment option for government workers.

Rep. Lantos stated that H.R. 2347 "puts the power of the purse to use so that Tehran might be deterred from its headlong pursuit of nuclear weapons." Rep. Frank added: "one of the advantages of this approach is that it makes it very clear that the actions taken under this bill will be actions taken by the American people: by elected state governments, by elected state officials, and by individuals acting on their own convictions, with their own money."

Response to the committee's approval was positive. Chairman of the Subcommittee on Terrorism, Nonproliferation and Trade Brad Sherman (D-CA) lauded the legislation and stated that the bill "will make it clear that state and local divestment efforts targeting Iran are fully authorized, whether they focus on corporations investing in Iran's oil sector or target Iran more broadly." Ranking Member of the

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Subcommittee on National Security and Foreign Affairs Christopher Shays (R-CT) remarked that military action against Iran is a last resort and that the legislation provides the US government with the proper tools to “deter the threat Iran poses to global security.”

Senator Barack Obama (D-IL) introduced a similar bill (S. 1430) in the Senate. That bill has been referred to the Senate Committee on Banking, Housing, and Urban Affairs. H.R. 2347, meanwhile, is undergoing review by several other House committees; Congressional sources predict that once these committees complete their review of the bill, it could move to the House floor for consideration. House sources were unable to give a projected timeframe for House consideration of H.R. 2347.

Legislators from both houses of Congress have introduced similar legislation regarding US businesses and Iran over the past month. Sen. Gordon Smith (R-OR) introduced S. 970 (the Iran Counter-Proliferation Act of 2007) on March 22, 2007, and Sen. Frank Lautenberg (D-NJ) introduced S. 1234 (the Stop Business with Terrorists Act of 2007) on April 26, 2007. Both bills would impose U.S. sanctions on foreign-domiciled companies doing business in Iran. S. 970 has been referred to the Senate Committee on Finance, and S. 1234 has been referred to the Senate Committee on Banking, Housing, and Urban Affairs.

OIE Formally Grants United States “Controlled Risk” BSE Status

On May 22, 2007, the World Animal Health Organization (OIE) formally announced that it had granted the United States and five other countries “controlled risk” status for bovine spongiform encephalopathy (BSE). The OIE preliminarily recommended controlled status for the United States in early March, and a formal announcement has been expected for several months. To manage the health risks associated with BSE, the OIE has established a set of standards that it uses to categorize member countries’ risk status. Following a risk assessment to identify potential factors for BSE occurrence, the OIE grants subject countries “negligible,” “controlled” or “undetermined” risk status based on the country’s ability to demonstrate to the OIE that it meets risk, surveillance and other criteria.

The formal designation could help the recently completed Korea-U.S. (KORUS) Free Trade Agreement (FTA) clear Congress once the Bush Administration submits the FTA’s implementing legislation (likely in fall 2007). Although the Agreement will eliminate over a 15 year period Korea’s 40 percent tariff on U.S. beef imports, it does not address Korea’s rejection or prohibition of certain U.S. beef products due to concerns over BSE. Korea banned all imports of U.S. beef following the December 2006 discovery of a cow in the United States that tested positive for BSE. Korea agreed in September 2006 to partially reopen its market to imports of boneless beef from animals under 30 months of age, but it later rejected

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three shipments of U.S. beef after discovering that the shipments contained small bone fragments. Members of both chambers of Congress, including Senate Finance Committee Chair Sen. Max Baucus (D-MT), have stated that they would not support the FTA unless Korea agreed to fully reopen its market to U.S. beef and have expressed hope that the OIE announcement would strengthen their argument that U.S. beef is scientifically safe for consumption. Baucus praised the OIE decision and stated that “with [the OIE] ruling, it is abundantly clear that the lingering restrictions maintained by Korea, Japan, China, and other trading partners have no scientific basis and must be lifted immediately.” (Japan restricts imports to beef from cattle under 20 months of age, and China maintains a ban on all imports of U.S. beef.)

U.S. Agriculture Secretary Mike Johanns also welcomed the decision as an indication that U.S. regulations to screen for BSE are effective and that U.S. beef of all ages was safe to trade. Johanns stated that the United States would use the decision to encourage trade partners to reopen their markets and would make clear the United States’ “expectation that they commit to a timeframe to amend import requirements and expand access to their markets” to reflect the OIE decision and adhere to international standards. According to the OIE’s announcement, the United States, Canada, Switzerland, Taiwan, Chile and Brazil have all “demonstrated that appropriate measures are being taken to manage all identified risks” but that these measures have not been in place for a “relevant period.” To qualify for controlled risk status, these countries also have demonstrated that they have conducted required surveillance and have met additional OIE criteria regarding treatment of any imported or indigenous BSE cases. According to Korean press sources, Korean government officials have indicated that they expect to hold talks on revising Korea’s beef import regime with the United States likely within the next several months. The talks could reopen Korea’s market to range of U.S. beef products including bone-in beef and beef from cattle over 30 months of age and would ensure greater Congressional support for the KORUS FTA. Japan has indicated that despite the OIE ruling, it will not lift immediately its ban on imports of beef from cattle over 20 months of age.

China Allows RMB to Rise as House Members File 301 Petition on China Currency

On May 18, 2007, the People’s Bank of China (PBOC) announced that it would widen the band by which the RMB may float against the U.S. dollar. Under the new band, the PBOC will allow the currency to appreciate by as much as 0.5 percent daily. Under the previous exchange rate system, the PBOC limited the RMB’s daily movement against the dollar to 0.3 percent. China has allowed the RMB to float by this

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amount since July 21, 2005, when it also revalued the RMB upward by 2.1 percent. Since then, the RMB has risen an additional five percent against the dollar. PBOC's announcement follows extensive criticism from some U.S. lawmakers that the Chinese government is deliberately undervaluing its currency to provide an unfair price advantage to Chinese exports.

The most recent criticism came on May 17, 2007, when a bipartisan group of 42 Members of the House of Representatives submitted to the Office of the United States Trade Representative (USTR) a Section 301 Petition to request that the Administration take action to end the Chinese government's alleged undervaluing and manipulation of its currency. Section 301 of the Trade Act of 1974 (19 U.S.C. § 2411) requires USTR to take action against any foreign country that denies the United States' rights under any trade agreement or adopts an act, policy or practice that denies these rights or places unjustifiable burdens on or restricts U.S. commerce. The petition reportedly requests that the Administration conduct an investigation to determine whether the conditions for action under Section 301 are met. In a letter to USTR Susan Schwab that accompanied the petition, the Members called on the Administration to request WTO consultations with China to discuss its exchange rate policy and to file a formal WTO complaint if after 60 days the consultations fail to address the currency problem. USTR will have 45 days to consider whether to accept the petition's request and to consider an investigation. USTR has rejected a three similar Section 301 petitions in 2004 and 2005.

Both PBOC's announcement and the Members' petition occurred days before the second round of Strategic Economic Dialogue (SED) talks scheduled for May 22 and 23 in Washington. The PBOC's move is likely calculated to ease U.S. pressure on China regarding currency and to send a message to U.S. lawmakers that China is aware of their concerns. It might also allow the SED to focus on broader, more long-term aspects of the U.S.-China bilateral relationship rather than becoming bogged down on China's exchange rate policy. Although the announcement marks only the second time China has allowed its currency to appreciate since removing the RMB's dollar peg in July 2005, a wider band is unlikely to have any significant effect on the RMB's value against the dollar. Even under the previous 0.3 percent band, PBOC never allowed the RMB to appreciate by the full amount.

USTR will likely reject Congress' 301 petition on several grounds. First, USTR and the Bush administration has consistently maintained that currency manipulation is a monetary policy issue within exclusive jurisdiction of the U.S. Treasury Department, rather than an international trade issue within USTR's sphere. During a May 9, 2007 House joint subcommittee hearing on "Currency Manipulation and Its Effects on U.S. Business and Workers," USTR for Monitoring and Enforcement Daniel Brinza stated that the Administration views the Treasury Department as responsible for "currency and exchange rate

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matters, while [USTR] is responsible for developing and coordinating U.S. international trade and direct investment policy.” Second, the Administration will likely claim that it has taken a number of other, more direct actions to address China’s alleged unfair trade practices. On March 30, the Department of Commerce (DOC) announced a decision to apply U.S. countervailing duty (CVD) law to imports of Chinese coated free sheet (CFS) paper, and on April 10 USTR requested separate WTO dispute settlement consultations with China on intellectual property rights (DS362) and market access for Certain Publications and Audiovisual Entertainment Products (DS363). Given the importance of the bilateral economic relationship, the Administration will therefore likely avoid taking too tough a stance against China, particularly on an issue that it has deemed not solely related to international trade. Regardless of USTR’s response, the timing of the 301 petition appears calculated to send a message to Chinese government officials participating in the SED meeting that if China fails to address its exchange rate management policy, Congress will take a more active role in doing so. Congress is considering a number of bills that would target China’s alleged unfair currency practices, and House Ways and Means Trade Subcommittee Chairman Sander Levin (D-MI) stated recently that he expects the submission of an additional bill that would allow the United States to treat currency manipulation as a countervailable subsidy. Despite the petitioner’s allegations in the CFS CVD petition that Chinese currency manipulation was an illegal subsidy, DOC refused to investigate the issue, stating that “petitioner has not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information.”

Senate Finance Committee Holds Hearing on US Preference Programs

Members of Congress have begun to examine the role of US preference programs and whether they are effective tools for the United States and developing countries. On May 16, 2007, the Senate Finance Committee held a hearing on US preference programs. Committee Chairman Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA) discussed the effectiveness of US preference programs with the hearing’s witnesses, who provided their on-the-record testimony on whether programs such as the Generalized System of Preferences (GSP) are useful. We review the hearing below.

- **Chairman Baucus** opined that the United States needs to assess its trade preference programs, such as the GSP, the Andean Trade Preferences and Drug Eradication Act (ATPDEA), and the African Growth and Opportunity Act (AGOA). He noted that Congress first developed these programs to help developing countries use trade to integrate into the global economy but added that “the world is a different place today than when those programs started.” Baucus stated that Congress “must

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determine whether [these programs] reflect the world of 2007” and whether they continue to promote political stability and sustainable economic growth in developing countries. In re-examining US preference programs, Baucus urged Members of Congress to ask themselves if preference programs enable US companies to stay competitive or if they are too difficult to use as well as whether the United States should extend these benefits to additional least developed countries. He noted that the ATPDEA will expire at the end of June and that Congress must consider whether to renew the program for all four ATPDEA countries or let these preferences expire.

- **Sen. Grassley** stated that he has “begun to question the worth” of US preference programs and opined that many developing countries, such as Brazil and India, “seem to view GSP benefits as an entitlement.” He stated that the United States should look for additional ways to graduate products and countries from eligibility for GSP benefits and opined that the current GSP program “does little, if anything, to encourage trade liberalization [and in fact] creates a disincentive to further trade liberalization.” Regarding ATPDEA, Grassley stated that he “sees no reason to extend this program” now that Peru and Colombia have negotiated and signed Free Trade Agreements (FTAs) with the United States. He also opined that he sees no reason to further extend ATPDEA benefits to Ecuador and Bolivia because “the current leaders of those two countries have based their careers on attacking U.S. policies.”
- **Meredith Broadbent, Assistant United States Trade Representative (USTR) for Industry, Market Access and Telecommunications**, provided a history of the GSP program and stated that USTR feels the GSP is an effective trade tool. According to Broadbent, US retailers have noted that they import products from GSP-eligible countries because the savings keep prices low and competitive and because GSP provides them with the opportunity to spread product sourcing across many GSP countries. She stated that the GSP program has helped influence positive developments in many areas of the US trade agenda with developing countries and that GSP benefits are an incentive to improve worker rights in beneficiary countries as well as increase protection and enforcement of intellectual property rights. Broadbent noted that the US Chamber of Commerce reports that GSP imports keep US manufacturers and their suppliers competitive. Broadbent also stated that the United States’ other trade preference programs such as the AGOA and the Caribbean Basin Initiative (CBI) are a vital element in the United States’ economic relations with its trading partners. She stated that the Bush Administration is “strongly committed to the goal of promoting economic growth in the developing world and, most importantly, in its poorest regions” and that US preference programs are an important part of that effort.

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- **Dr. Muhammad Yunus, Founder of the Grameen Bank- Bangladesh**, urged the United States to extend duty-free treatment to all goods imported from Least Developed Countries (LDCs) and opined that the denial of duty-free access to major exports from LDCs to the US market “is a constraint on the socio-economic development” of these countries. He stated that export-led growth and exports of labor-intensive goods such as apparel “has long been a path out of poverty for developing countries” and urged for the continuation of US preference programs and their benefits to LDCs.
- **Eric Reinhardt, Assistant Professor of Political Science- Emory University**, opined that, “measured against their own stated objectives, US unilateral trade preference programs are not effective.” According to Reinhardt, US preference programs are counterproductive in many cases “because they forsake the core features of the successful global trading system: reciprocity, non-discrimination, and enforceable legal bindings.” He stated that unilateral preference programs institutionalize “perverse incentives that inhibit the growth of trade on the part of beneficiary countries” and opined that in order to correct these problems, the United States should shift to full World Trade Organization (WTO) trade relations with GSP beneficiaries, with: (i) WTO commitments to zero duties on all GSP-eligible tariff lines, on a most-favored-nation (MFN) basis, enforceable through standard WTO procedures; (ii) modest new MFN concessions by the United States on key products with the greatest export potential for GSP beneficiaries; (iii) linking these WTO concessions to reciprocal liberalization by GSP beneficiaries; and (iv) the ultimate elimination of GSP.
- **Marcos Iberkleid, President of Ametex- Bolivia**, stated that US preference programs, such as the ATPDEA, foster economic growth for developing countries and encourage business formation and foreign investment. He stated that US preference programs “are not seen as a handout” but rather help developing countries “realize their potential.”
- **Katrin Kuhlmann, Senior Vice President for Global Trade- Women's Edge Coalition** stated that trade is essential to the development of LDCs and that preferential market access, as embodied in US preference programs, is critical to increasing trade for these poor nations. She noted that US preference programs also promote economic and legal reforms in developing countries and encourage economic growth, poverty alleviation, and reform in poorer countries through increased trade. According to Kuhlmann, US preference programs are achieving the intended result of promoting development and she noted that GSP beneficiary countries increased exports of products eligible for GSP treatment close to eight percent annually. She also opined that increased access to the US market has had a positive impact on investment in developing countries, which, in turn, has contributed to income growth.

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The Senate Finance Committee's examination of US preference programs is likely the first of many hearings and discussions on the effectiveness of programs such as the GSP, the ATPDEA and the AGOA. On December 9, 2006, Congress extended the GSP program for two additional years along with the AGOA and the ATPDEA (through June 2007). Members of Congress will shortly begin discussions on the fate of the ATPDEA and Congress will likely use the two years to analyze and amend the GSP program, paying special attention to large developing economies, such as India and Brazil, that receive duty-free benefits under the program.

USTR Names Special Agricultural Envoy to WTO Negotiations as Current Chief Agricultural Negotiator Returns to Private Sector

On May 11, 2007, the Office of the United States Trade Representative (USTR) announced that U.S. Chief Agricultural Negotiator Richard Crowder would leave USTR and return to working in the private sector effective May 31, 2007. USTR named the Department of Agriculture's current Deputy Chief Economist Joseph Glauber as special agricultural envoy to the World Trade Organization (WTO) Doha Round negotiations. Beginning May 31, Glauber will assume Crowder's duties and responsibilities as lead U.S. agricultural negotiator in the multilateral negotiations. USTR Susan Schwab stated that she regretted Crowder's departure but understood "his desire for relief from the countless hours traveling around the world and his wish to spend more time with his real family." She added that Crowder's replacement, Glauber, "has been a valuable member of the U.S. team throughout the WTO negotiations and will make an important contribution" in his role as special agricultural envoy.

According to USTR, Glauber has served as Deputy Chief Economist at the Department of Agriculture since 1992 and that prior to that position, he served as senior staff economist for agriculture, natural resources, and trade at the President's Council of Economic Advisers between 1991 to 1992. From 1984 to 1991, Glauber also served as economist at the Department of Agriculture's Economic Research Service.

President Bush Extends Sanctions on Syria; U.S. Businesses Urge Senate to Reject Iran Sanctions

On May 11, 2007, President George Bush ordered that unilateral sanctions against Syria be extended for one more year, citing suspected Syrian support for terrorism and Syria's continued threat to American interests. President Bush issued Executive Order 13338, in which he extended the ban specifically due to "the threat to the national security, foreign policy, and economy of the United States constituted by the

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actions of the Government of Syria in supporting terrorism, maintaining its then-existing occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international efforts with respect to the stabilization and reconstruction of Iraq.” The sanctions ban weapons supplies to Syria, restrict U.S. trade with Syria, and freeze accounts of those suspected of helping Syria to shelter prominent terrorists or of being involved in the development of nuclear, chemical and biological weapons.

President Bush extended the sanctions pursuant to his authority under the International Emergency Economic Powers Act (IEEPA) and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (Public Law 108-175). Under the IEEPA, President Bush declared Syria a “national emergency” in May 2004. Syria has maintained that label since then and has been subject to U.S. sanctions. Under the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, President Bush has withdrawn the U.S. ambassador from Damascus, stopped Syrian flights to the United States, banned certain U.S. exports to Syria, and frozen some Syrian property in the United States.

Separately, in a May 9 letter to members of the Senate, U.S. business organizations urged Senators to oppose proposed legislation (S. 970 and S. 1234) that would impose U.S. sanctions on foreign-domiciled companies doing business in Iran. The letter states that the legislation targets U.S. allies and that the bills “draw attention away from the core problem: Iran's threatening behavior in seeking nuclear weapons” and that “it is counterproductive to penalize entities and individuals in the very countries whose cooperation [the United States] need[s] to effectively counteract Iran's dangerous behavior.” The U.S. businesses urge Congress to “ensure that the world's focus remains on applying multilateral pressure on Iran and that the United States and [its] allies continue to present a united front to influence Iran's behavior.” They believe that S. 970 and S. 1234 do not further the interests of U.S. national security.

Signatories to the letter include the U.S. Chamber of Commerce, the National Foreign Trade Council, The Business Roundtable, the Coalition for Employment Through Exports, the Emergency Committee for American Trade, the National Association of Manufacturers, the National U.S.-Arab Chamber of Commerce, the Organization for International Investment, the U.S. Council for International Business, and USA*Engage.

Sen. Gordon Smith (R-OR) introduced S. 970 (the Iran Counter-Proliferation Act of 2007) on March 22, 2007, and Sen. Frank Lautenberg (D-NJ) introduced S. 1234 (the Stop Business with Terrorists Act of 2007) on April 26, 2007. S. 970 has been referred to the Senate Committee on Finance and S. 1234 has been referred to the Senate Committee on Banking, Housing, and Urban Affairs.

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Sen. Brown Introduces Legislation on FTAs and National Security Reviews

On May 3, 2007, Senator Sherrod Brown (D-OH) introduced legislation (S. 1280) that mandates national security reviews for any future Free Trade Agreements (FTAs) into which the United States enters. In presenting his proposal, Sen. Brown stated that the United States opens its borders to homeland security concerns when it opens them to trade and noted that “it is the responsibility of [the U.S.] government to ensure that while opening markets to trade, [its] first priority remains the safety and security of the American people.”

Under the Trade-Related American National Security Enhancement and Accountability (TRANSEA) Act, U.S. FTAs could also be suspended if the safety, health, and welfare of Americans are in doubt. The Office of United States Trade Representative, along with the Departments of State, Homeland Security, and Justice, would also have to report to Congress on the national security considerations of FTAs before starting and after concluding trade negotiations. According to a press release on the legislation, national security considerations would include potential public health consequences, including the risk of contaminated food.

The legislation would also create a new Congressional Executive Commission on Trade Security (CECTS) that would be headed by appointed commissioners; both parties in the Senate and House of Representatives would appoint these commissioners. The commissioners would provide an annual certification that the terms of an FTA do not pose a threat to American national security interests. If the commissioners conclude that an FTA does pose a threat to national security, the President would be obligated to ensure the safety and security of the United States by suspending the agreement, or any part of the agreement.

The proposed legislation has been referred to the Senate Finance Committee. Whether the Senate Finance Committee will seriously consider the bill and hold a hearing on its contents is unclear. Sen. Brown, a junior Senator, has made it clear since coming into office in January 2007 that he will closely scrutinize any trade initiatives in which the United States is a party to ensure the United States’ “economic well-being.” Sen. Brown’s latest proposed legislation indicates that he will continue to focus on U.S. FTAs. His junior status, however, means that his legislation will likely have to wait for a response from Senate leadership, such as Senate Finance Committee Chairman Max Baucus (D-MT) or Ranking Member Charles Grassley (R-IA), both “pro-trade” Senators. Without solid backing from senior Senators, Sen. Brown’s proposed legislation is unlikely to move very far in the Senate.

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Free Trade Agreements

Congress and Bush Administration Reach Agreement on New US Trade Policy

Summary

House Democrats and the Bush Administration have reached an agreement on the inclusion of labor standards in pending and future US bilateral trade agreements, thus allowing for Congressional consideration of the pending US-Peru and US-Panama Free Trade Agreements (FTAs). On May 10, 2007, Speaker of the House Nancy Pelosi (D-CA) along with Democratic and Republican legislators and Bush Administration officials – including United States Trade Representative (USTR) Susan Schwab and Secretary of the Treasury Henry Paulson – announced the agreement that includes labor rights and other provisions sought by Democrats in FTAs.

Analysis

Under the agreement, future FTAs would include core international labor and environmental protection standards and trade partners that intentionally lower their standards to gain an unfair competitive advantage would be subject to trade sanctions. Labor and environmental provisions will be incorporated into the texts of the FTAs, rather than as side agreements. A press release on the agreement stated that “pending FTAs will be amended to incorporate [these] key Democratic priorities.” The agreement also creates a new training and education program for US workers who lose their jobs because of trade.

The agreement met positive reaction from legislators and Administration officials. House Ways and Means Committee Chairman Charles Rangel (D-NY) noted that the agreement is a “historic breakthrough that will end years of polarization between the political parties over trade.” House Ways and Means Ranking Member Jim McCrery (R-LA) stated that the agreement could “serve as a template” for extension of Presidential Trade Promotion Authority (TPA), set to expire on June 30, 2007. Senate Finance Committee Chairman Max Baucus (D-MT) stated that “this the first time that trade agreements will include enforceable, internationally recognized core environmental and labor provisions” and suggested that the agreement would result in broader Congressional consensus on forthcoming trade issues. USTR Schwab lauded the agreement, remarking that it “opens the way” for TPA. Congressional Democrats were quick to point out, however, that the agreement ensures support for only two of the four pending FTAs: the US-Peru and the US-Panama FTAs. Democrats, including Chairman Rangel, noted that the issue of continued violence and assassinated labor leaders in Colombia and the ban on US beef products

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and barriers to US automobiles in Korea require continued opposition to the US-Colombia and US-Korea FTAs.

According to a press release, the plan focuses on labor and environmental provisions, pharmaceuticals, investment, port operations, and worker assistance and training:

- **Labor.** Congressional leaders and the Administration agreed to language binding FTA signatories to "adopt, maintain and enforce" the five International Labor Organization (ILO) core labor standards, which guarantee workers the right to organize and bargain collectively, and prohibit child labor, forced labor, and workplace discrimination. The agreement includes a fully enforceable, binding commitment prohibiting FTA countries from lowering labor standards; it also limits prosecutorial and enforcement discretion, so that FTA countries cannot defend the failure to enforce laws related to the five core standards on the basis of resource limitations or decisions to prioritize other enforcement issues.
- **Environment.** The agreement includes a fully enforceable commitment that FTA countries adopt, implement, and enforce obligations under seven major multilateral environmental agreements: the Convention on International Trade in Endangered Species, the Montreal Protocol on Ozone Depleting Substances, the Convention on Marine Pollution, the Inter-American Tropical Tuna Convention, the Ramsar Convention on the Wetlands, the International Convention for the Regulation of Whaling, and the Convention on Conservation of Antarctic Marine Living Resources. The agreement also includes a fully enforceable, binding commitment prohibiting FTA countries from lowering their environmental standards. The agreement also establishes a fully enforceable Annex requiring Peru to take major specific steps to crack down on all illegal logging, and additional action to stop illegal logging of mahogany.
- **Pharmaceuticals.** The agreement changes the "data exclusivity" provision in future FTAs to allow generics to enter the market more quickly than under the old provision. It stipulates, however, that the data exclusivity provision should not preclude FTA countries from taking measures to protect public health and from utilizing the WTO "health solution." The agreement also eliminates any requirement that a drug regulatory agency withhold approval of a generic drug until it can certify that no patent would be violated if the generic were marketed.
- **Government Procurement.** The agreement stipulates that future FTAs contain a provision that allows US Federal and State governments to condition government contracts on contractors adhering to the five basic labor standards and acceptable conditions of work and wages.

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- **Port Security.** Under the agreement, future FTAs would clarify that the United States has full, non-challengeable authority to prevent foreign companies from operating US ports, based on national security concerns.
- **Investment.** The agreement provides that future FTAs will explicitly state that foreign investors in the United States will not be accorded greater substantive rights with respect to investment protections than US investors in the United States.
- **Worker Assistance and Training.** Congressional leaders and the Administration agreed to develop and implement the Strategic Worker Assistance and Training (SWAT) initiative to promote education and training, as well as portable health and pension benefits. The program will (i) involve public-private partnerships to educate youth and to upgrade workers' job skills, (ii) provide income support and health and pension benefits, and (iii) provide "meaningful support, training and revitalization programs for entire communities hurt by the effects of trade and technology."

Outlook

While Congressional leaders and the Administration have agreed in principle on elements of the "new" US trade policy, they have not yet drafted a final version of the agreement; Congressional sources believe this process will take several weeks to conclude. The May 10 agreement is evidence of the Bush Administration's willingness to compromise on trade issues, and may improve the chances for Congressional renewal of TPA. The agreement is also a positive development for the Peru and Panama FTAs; once this agreement is finalized, it is likely that Congress will begin considering both FTAs. The Colombia FTA seems to be losing support, given the violence in the country and the assassinations of several labor union leaders; Congressional sources give the Colombia FTA little chance of passage, even in light of this May 10 agreement. The Korea FTA will see its fair share of opposition in Congress – especially from "beef" and "auto" legislators – but enjoys more Congressional support than the Colombia FTA; unlike the Colombia FTA, the Korea FTA is also backed by strong US business support.

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KORUS House Holds Briefing on KORUS FTA and Upcoming Legislative Process

Summary

On May 24, 2007, the KORUS House hosted a briefing on the US-Korea Free Trade Agreement (KORUS FTA) and upcoming Congressional consideration of the bilateral agreement. **Korea Economic Institute's Director of Congressional Affairs and Trade Troy Stangarone** provided his insight on the KORUS FTA and the issues on which legislators will focus. We review his remarks below.

Analysis

I. Background

On April 2, 2007, the Office of the United States Trade Representative (USTR) announced that it had concluded negotiations for the KORUS FTA. The United States and Korea traded some \$72 billion in goods in 2006, and the KORUS FTA is the largest bilateral/regional trade agreement that the United States has concluded since the North American Free Trade Agreement (NAFTA). It is the largest bilateral trade agreement that Korea has ever completed. US and Korean negotiators arrived at the deal after eight formal negotiating rounds and two rounds of high-level talks in Washington and Seoul to address remaining issues in the agreement's sensitive chapters such as agriculture, automobiles, textiles, trade remedies and pharmaceuticals. The agreement's final text remains subject to approval by both countries' legislative bodies. Prior to the FTA's conclusion, many Members of Congress stated that they would not support an agreement that did not guarantee market access for US exports of agricultural products (especially beef) and automobiles. Senate Finance Committee Chair Sen. Max Baucus (D-MT) stated on April 2, 2007 that the FTA's outcome is "unacceptable," and that he would oppose the agreement and delay its passage through the Senate "unless and until Korea completely lifts its ban on US beef." Sen. Debbie Stabenow (D-MI) criticized the agreement's provisions on automobiles as unfair and pledged to do "everything in [her] power to defeat [the FTA]." Korea will hold Presidential elections in December 2007, and the agreement's passage could become a sensitive political issue in the campaign.

II. KORUS FTA and the US-Korea Alliance

Stangarone opined that the KORUS FTA will strengthen the US-Korea political alliance. He stated that the KORUS FTA would also add an economic dimension to the alliance, and that it would lay a "firm economic foundation" for enhanced trade and further cooperation. He also opined that the bilateral agreement would strengthen the political ties between the two countries. According to Stangarone, Korea

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affects US economic competitiveness, especially in Asia. He stated that closer economic ties between the United States and Korea will enhance US competitiveness in the region.

III. Benefits of the KORUS FTA

According to Stangarone, the KORUS FTA offers many benefits to both countries. Korea will serve as a gateway to Asia for the United States. Stangarone also stated that closer ties with the United States enables Korea to act as a power balance between China and Japan. He opined that if the US Congress does not approve the KORUS FTA, the United States will be at a competitive disadvantage in Asia, given that the EU and China have re-focused their trade efforts on achieving bilateral trade agreements with Asian partners and on increasing their market presence in the region. According to Stangarone, if the US Congress does not approve the bilateral agreement with Korea, the EU or China could “swoop in” and gain a competitive advantage in the region. He also noted that if the United States does not implement the KORUS FTA, it will lose the benefits in the agreement that it negotiated.

IV. Beef Trade

Stangarone opined that the World Animal Health Organization's (OIE) May 22, 2007 formal announcement that it had granted the United States and five other countries “controlled risk” status for bovine spongiform encephalopathy (BSE) was a positive development for the KORUS FTA. To manage the health risks associated with BSE, the OIE has established a set of standards that it uses to categorize member countries' risk status. Following a risk assessment to identify potential factors for BSE occurrence, the OIE grants subject countries “negligible,” “controlled” or “undetermined” risk status based on the country's ability to demonstrate to the OIE that it meets risk, surveillance and other criteria. The formal designation could help the KORUS FTA clear Congress once the Bush Administration submits the FTA's implementing legislation (likely in fall 2007) because Korea could use the OIE's designation to reopen its borders to US beef, thus garnering support for the bilateral agreement from US legislators who are focused on beef trade. Although the FTA will eliminate over a 15 year period Korea's 40 percent tariff on US beef imports, it does not address Korea's rejection or prohibition of certain US beef products due to concerns over BSE. Korea banned all imports of US beef following the December 2006 discovery of a cow in the United States that tested positive for BSE. Korea agreed in September 2006 to partially reopen its market to imports of boneless beef from animals under 30 months of age, but it later rejected three shipments of US beef after discovering that the shipments contained small bone fragments. Members of both chambers of Congress, including Sen. Baucus, have stated that they would not support the FTA unless Korea agreed to fully reopen its market to US beef and have expressed hope that the OIE

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announcement would strengthen their argument that US beef is scientifically safe for consumption. Baucus praised the OIE decision and stated that “with [the OIE] ruling, it is abundantly clear that the lingering restrictions maintained by Korea, Japan, China, and other trading partners have no scientific basis and must be lifted immediately.”

When asked why beef trade with Korea was such a contentious issue, Stangarone opined that the different structures of the US Senate and the House of Representatives explain the importance of the beef issue in the KORUS FTA. According to Stangarone, the US agriculture lobby is more influential in the Senate and that key legislators, such as Sen. Baucus, have made agricultural trade a priority. Thus, Stangarone states that because the Senate is comprised only of 100 legislators, the KORUS FTA would face more scrutiny and a more difficult passage in the Senate if beef issues are not resolved. According to Stangarone, a small group of Senators could easily influence the votes on the KORUS FTA based on their agricultural interests. The House of Representatives, on the other hand, is composed of more legislators and although several Representatives have expressed their disapproval with specific chapters in the KORUS FTA – such as the auto chapter – Stangarone believes that these “small groups of legislators with specific interests” are not influential enough to affect passage of the agreement.

Outlook

Despite its economic importance, the KORUS FTA is one of several bilateral agreements awaiting Congressional consideration and likely must wait until Congress considers other, earlier trade agreements. The US-Peru and US-Panama FTAs were completed before the KORUS agreement, and Congress traditionally adopts a “first completed, first considered” policy with FTAs. Thus, Congress will likely consider these agreements before KORUS. Congressional sources opine that consideration of the KORUS FTA could come as early as late summer. Given the breadth of the KORUS FTA and the significance of the agreement for both countries, Congress follow usual practice and consider the KORUS FTA after the Peru and Panama agreements, sometime in the fall after Congress’ summer recess.

On the other hand, the “first completed, first considered” policy with FTAs is not a formal congressional rule, and given the KORUS FTA’s importance, relatively minor labor and environmental issues and overwhelming US business support, Congress could opt to consider the Agreement before the Panama and Peru FTAs. The Panama and Peru agreements raise contentious labor and environmental concerns among many House and Senate Democrats, and they do not enjoy the same level of business and congressional support as does the KORUS FTA. Thus, US legislators could be motivated to consider the KORUS FTA prior to the Panama and Peru agreements, and nothing would prevent them from doing so .

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The recent OIE announcement on US beef should prove a positive development for the KORUS FTA, but Korea still must decide what to do with the OIE announcement and whether it will open its market to US beef. A Korean decision to do this would placate key legislators such as Sen. Baucus who likely will support the KORUS FTA. At such a time, opposition from US automakers and traditional FTA opposition groups (e.g., unions, environmentalists) would probably not be sufficient to prevent congressional passage of the KORUS FTA's implementing legislation.

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Free Trade Agreements Highlights

United States Meets with Asia-Pacific Trade Partners Under Various TIFAS

US-Brunei TIFA

On May 7, 2007, officials from the United States and Brunei met in Bandar Seri Begawan for the first meeting under the U.S.-Brunei Trade and Investment Framework Agreement (TIFA). Assistant United States Trade Representative for Southeast Asia and the Pacific Barbara Weisel led the U.S. delegation, and Permanent Secretary (International Trade Section) at the Brunei Ministry of Foreign Affairs and Trade Lim Jock Hoi led the Brunei delegation. The two delegations focused their discussions on (i) how the United States could help Brunei diversify its economy, and (ii) both countries' common objectives in the Asia-Pacific Economic Cooperation forum and under the US-ASEAN TIFA. (ASEAN is the Association of Southeast Asian Nations.) Both sides also discussed intellectual property rights protection and enforcement, regulatory issues affecting bilateral trade between the countries, and ways to improve market access and facilitate trade.

The United States and Brunei signed the TIFA on December 16, 2002. 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 Free Trade Agreement (FTA) negotiations. The United States has not indicated that it plans to pursue formal FTA negotiations with Brunei in the near future, although the TIFA indicates that Brunei is a likely candidate for a future FTA. Although two-way goods trade between the United States and Brunei is relatively small compared to other trade flows (i.e., in 2006, US – Brunei trade totaled close to \$600 million), Brunei is member of ASEAN. USTR's meeting with Brunei officials under the US-Brunei TIFA indicates that the United States will continue to strengthen economic linkages in the region with the hopes of eventually securing an FTA with ASEAN.

US-Philippines TIFA

On May 9, 2007, officials from the United States and the Philippines met in Washington, D.C. for a meeting under the U.S.-Philippines TIFA. Assistant United States Trade Representative for Southeast Asia and the Pacific Barbara Weisel led the US delegation, and Undersecretary of the Department of Trade and Industry Thomas Aquino led the Philippine delegation. The two delegations focused their discussions on increased market access for a range of products, including agricultural, industrial and high

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technology goods. Both sides also reviewed tariff and customs policies and discussed actions by the Philippine Government in 2006 and 2007 to strengthen intellectual property protection and enforcement. US and Philippine officials also discussed further cooperation on regional initiatives in the ASEAN and the Asia Pacific Economic Cooperation (APEC) that would build stronger trade and economic ties between the United States and ASEAN.

The United States and the Philippines signed the TIFA in 1989. Since the signing of the US-Philippines TIFA, two-way trade has grown and reached \$17.3 billion in 2006, making the Philippines the United States' 28th largest trading partner. The United States has not indicated that it plans to pursue formal FTA negotiations with the Philippines in the near future, although the TIFA indicates that the Philippines is a likely candidate for a future FTA.

US-Indonesia TIFA

On May 21, 2007, officials from the United States and Indonesia gathered for a meeting under the US-Indonesia TIFA. United States Trade Representative Susan Schwab led the US delegation, and Indonesian Trade Minister Mari Pangestu led the Indonesian delegation. The two delegations agreed to create four additional working groups under the TIFA that would focus on intellectual property rights (IPR), agriculture, industrial goods, and services and investment. Schwab and Pangestu also discussed further cooperation on regional initiatives in the ASEAN and a successful completion to the World Trade Organization (WTO) Doha Round.

The two sides reviewed the progress made on implementation of the bilateral Memorandum of Understanding (MoU) to combat illegal logging and associated trade. According to USTR, the United States and Indonesia signed the MoU in November 2006; since then, officials from both countries have met to develop specific activities that will be funded with the \$1 million that the United States already has dedicated to the MoU. Officials from both countries also discussed investment, IPR, services, customs, transshipment of goods, and agriculture.

According to USTR, Indonesia is the United States' 31st largest trading partner; in 2006, two-way trade totaled \$16.5 billion, a 9.3 percent increase over 2005. The United States has not indicated that it plans to pursue formal FTA negotiations with Indonesia in the near future, but the TIFA indicates that Indonesia is a likely candidate for a future FTA. According to USTR, Indonesia is a key member of ASEAN. USTR's meeting with Indonesian officials under the US-Indonesia TIFA indicates that the United States will continue to strengthen its economic ties to Asian partners and consider a future FTA with Indonesia as well as ASEAN.

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Multilateral

Multilateral Highlights

WTO Dispute Panel Announces Delay in Airbus-Boeing Ruling; US Blocks EU Request for Panel on “Zeroing”

A World Trade Organization (WTO) dispute settlement Panel has delayed its ruling on the EU's complaint against the United States for alleged illegal subsidies to Boeing (DS317). In a May 18, 2007 communication to WTO Members, the Panel's chairman Crawford Falconer stated that the Panel plans to complete its work and issue a ruling by July 2008. Falconer stated that "substantive and procedural complexities of this dispute" caused the delay.

Falconer originally scheduled the first and second panel hearings for July 11-12 and November 6-7, respectively. He set February 4, 2008 and April 7, 2008 as the tentative dates for the respective circulation of the Panel's preliminary and final rulings to the two parties. The delay pushes the timetable forward. Under the revised schedule, the first and second panel hearing will occur September 26-27 and January 15-16, and the Panel will circulate its preliminary ruling on or around April 8, 2008, with the final ruling on or around June 8, 2007.

The EU's complaint alleges that Boeing receives preferential tax breaks and “launch aid” from the U.S. military and Japan, in particular for the Boeing 787 Dreamliner which competes against the Airbus A-350 superjumbo. The EU accused U.S. federal and state authorities of providing Boeing with \$23.7 billion in illegal subsidies since 1990 that have allowed Boeing to price its aircraft aggressively, thereby causing lost market sales, lost market share, and price suppression to Airbus in several markets. On November 22, 2006, the WTO appointed new panelists to rule on the EU's claims against Boeing.

The Panel reviewing U.S. claims against Airbus (DS316) tentatively will issue a preliminary ruling in early September 2007 and a final ruling in October. The U.S. WTO complaints focus on the EU's “launch aid” program, alleging that European governments cover the startup costs for Airbus' new aircraft, and that Airbus repays this assistance only if the plane is a success.

Separately, on May 22, 2007, the United States blocked a request from the EU for the establishment of a dispute panel to rule on U.S. antidumping measures on European imports based on the U.S. Department of Commerce's “zeroing” methodology. The United States circulated a statement to the WTO Dispute Settlement Body (DSB) in which it stated that it was “considering the issue in assessment reviews carried

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out within the context of a separate WTO dispute” involving Japan’s complaint against the United States’ use of zeroing. The communication noted that “the EU’s panel request is thus premature, and [the United States] cannot agree to the establishment of a panel.” The EU will have an opportunity to renew its panel request at the June 20 DSB meeting; under WTO rules, the DSB must automatically accept the EU’s second panel request. The EU in its panel request identified 18 cases covering 52 original investigations, administrative reviews and sunset reviews, in which DOC allegedly used the zeroing methodology to calculate dumping duties higher than the actual margin of dumping. The cases included imports of EU ball bearings, antifriction bearings, steel products, pasta, and chemicals.

This is not the first time that the EU has requested the formation of a dispute settlement panel to rule on cases involving the United States zeroing practice. On September 22, 2006, the EU challenged DOC’s use of zeroing in 37 cases where the methodology was applied in the original dumping investigations, administrative reviews, and sunset reviews of EU imports, including ball bearings, steel products, pasta, and chemicals (DS350).

Zeroing refers to the practice whereby an investigating authority discounts so-called “negative dumping margins” to zero. Where the export price of a product is lower than the price in the exporting country, 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 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.

On February 22, 2007, DOC ceased its use of zeroing in antidumping investigations that utilize weighted average-to-weighted average price comparisons. The change was necessary to implement the recommendations and rulings of the WTO DSB in connection with the U.S.-EU dispute *US – Zeroing (EC)* (DS294). 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 (*i.e.*, it no longer zeroes) in antidumping investigations where it uses weighted average to weighted average comparisons. On January 9, 2007, the WTO Appellate Body in *United States – Measures Relating to Zeroing and Sunset Reviews* (DS322) reversed the Panel and found that the practice of zeroing – in all forms and during investigations and reviews – violates U.S. obligations under the WTO Anti-Dumping Agreement. Analysts opine that this ruling was the most definitive AB decision to date on the WTO-inconsistency of zeroing because the ruling declared the practice to be WTO-

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inconsistent, regardless of whether it was used in the original investigation, in periodic reviews, in new shipper reviews, or in sunset reviews, or whether the administering authority utilizes an average-to-average or transaction-to-transaction comparison.

WTO Appellate Body Member Janow to Step Down in December

On May 22, 2007, the chair of the World Trade Organization's (WTO) Dispute Settlement Body, Bruce Gosper, informed WTO Members that Merit Janow, the only US member of the WTO's Appellate Body, has announced she will resign from her position in December 2007 and will not seek another four-year term. Janow's announcement marks another upcoming vacancy in the AB. Yasuhei Taniguchi, a Japanese national, will complete his second term in December; Georges Michel Abi-Saab, an Egyptian national, and Arumugamangalam Venkatachalam Ganesan, an Indian national, will complete their second terms on May 31, 2008. WTO rules limit the appointment of AB members to two four-year terms.

The United States nominated Janow to her position on the AB in October 2003; Janow was the first woman to serve on the AB. Prior to her appointment, Janow was a professor of law at Columbia University and a former Deputy Assistant United States Trade Representative. She will become the first AB member not to be appointed for a second term. WTO sources believe that the vacancy left by Janow will be filled by a US national. Gosper noted that the other vacancies may be distributed on a geographical basis.

United States, Japan Agree to Compliance Date in "Zeroing" Dispute

In a May 8, 2007, notification to World Trade Organization (WTO) Members, the United States and Japan announced that they have agreed on a deadline for the United States to implement a WTO dispute ruling on the U.S. "zeroing" methodology in antidumping investigations. According to the notification, the United States has a deadline of December 24, 2007, to comply with the WTO Dispute Settlement Body's (DSB) findings. The notification also stated that because the two sides were able to reach an agreement, Japan will withdraw its request for WTO arbitration on the deadline; prior to the notification of the agreement, WTO Director-General Pascal Lamy had appointed a former Appellate Body (AB) judge to determine the compliance deadline.

On January 9, 2007, the WTO AB released its decision in *United States – Measures Relating to Zeroing and Sunset Reviews* (DS322) and found that the practice of zeroing violates U.S. obligations under the WTO Anti-Dumping Agreement. In Fall 2006, a WTO Panel had decided that certain types of zeroing – including zeroing during administrative reviews – were permitted under the Agreement. The AB reversed

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these findings by the Panel, ruling that all of the types of U.S. zeroing challenged by Japan were WTO-inconsistent. Analysts opine that this was the most definitive AB decision to date on the WTO-inconsistency of zeroing because the ruling went beyond previous WTO decisions against zeroing by declaring the practice illegal, whether used in the original investigation, in periodic reviews, in new shipper reviews, or in sunset reviews. The AB also ruled that zeroing is illegal whether an average-to-average or transaction-to-transaction comparison is used.

Zeroing refers to the practice whereby an investigating authority discounts so-called “negative dumping margins” to zero. Where the export price of a product is lower than the price in the exporting country, 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 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.

The U.S. Department of Commerce (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 implement the recommendations and rulings of the WTO DSB in connection with the U.S.-EU dispute *US – Zeroing (EC)* (DS294). 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 (i.e., zero) in antidumping investigations where it uses weighted average to weighted average comparisons. DOC has not yet announced how it will comply with the most recent WTO ruling in the U.S.-Japan dispute.

G-4 Discusses Agriculture, NAMA at London Meeting; Will Continue Discussions in Paris and Brussels in Coming Weeks

On May 3, 2007, senior trade officials from the Group of Four (G-4) – the United States, the EU, Brazil, and India – ended a meeting in London that focused on the World Trade Organization (WTO) Doha Round agriculture negotiations and the reduction of farm tariffs and subsidies. WTO sources noted that the three-day discussions were positive but added that no breakthroughs emerged from the talks. Some positive movement occurred, with the United States signaling that it is willing to improve on its standing agriculture offer and reduce overall U.S. spending on agricultural trade-distorting subsidies to less than

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\$23 billion a year. The EU also indicated that it is willing to improve upon its agriculture offer and cut its farm tariffs by an average of 54 percent, an increase from their standing proposal of a 39 percent cut in farm tariffs.

WTO sources have noted, however, that although G-4 members held positive discussions, WTO Members are still far from reaching a final comprehensive agriculture agreement. Senior G-4 officials will continue their talks in Paris May 14-16 followed by another meeting in Brussels May 17-18. Sources note that these meetings will continue to focus on agriculture, although G-4 members are also expected to discuss non-agricultural market access (NAMA) and industrial tariffs.

The G-4 meetings come just weeks after WTO Director-General Pascal Lamy accused the United States, the EU, Brazil, and India of holding the Doha Round “hostage.” On April 23, 2007, Lamy stated that he had received no indication from these countries that they were willing to offer a new proposal to advance the stalled talks beyond the contentious issues of agriculture and NAMA. Lamy stated that the Doha negotiations will not be concluded until these WTO Members offer their leadership and “table additional contributions to the collective success of this multilateral enterprise.” The G-4’s recent and future meetings indicate that the group of countries is seriously considering Lamy’s calls for action. However, with a lack of a clear breakthrough in London, the Doha Round continues to remain stalled. Unless G-4 members drastically change their standing offers at the Paris and Brussels meetings, it is unlikely that the Round will move forward from agriculture and NAMA issues in the short term.

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