WHITE & CASE

November 2008

Japan External Trade Organization

US, WTO and Regional Trade Agreements Monthly Report

IN THIS ISSUE

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice.

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Reports in Detail

United States

President-Elect Obama Considers Candidates for Trade-Related Cabinet Positions

Summary

On November 4, 2008, Sen. Barack Obama (D-IL) defeated Sen. John McCain (R-AZ) in the Presidential race. President-elect Obama is the first sitting Senator elected as President since 1960. The Obama transition team and the President-elect are now considering candidates for appointments to the Cabinet, including United States Trade Representative (USTR) and Secretary of the Treasury. We review herein potential candidates for trade-related Cabinet positions, such as USTR and the Secretaries of Treasury and Commerce. We also review herein any transitions in the House Ways and Means and Senate Finance Committees – the two Congressional committees with jurisdiction over trade-related legislative matters – as a result of the elections.

Analysis

I. Background

On November 4, 2008, Sen. Obama was elected President. President-elect Obama is now considering candidates for appointments to the Presidential Cabinet. Campaign sources note that the Obama transition team is focusing first on ―core" Cabinet appointments, such as Secretary of the Treasury and any other appointments that would potentially deal with the financial crisis. Sources opine that it is unclear where other trade appointments – such as USTR and Secretary of Commerce – would fit into the appointment process, but private sector sources opine that any trade-related appointments may occur in the second or third tranche of announcements. President-elect Obama has stated that he expects to make all Cabinet announcements ―over the next several weeks."

On November 12, 2008, the Obama transition team selected former Federal Communications Commission Chairman Reed Hundt and former Executive Director of the National Economic Council Michael Warren as members of the Transition Project's Agency Review Working Group responsible for international trade and economics agencies. Agency review teams assess the budget and personnel of a given agency along with their current work focus in order to prepare for the new Administration taking

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office. Anna Gomez, Vice President of Government Affairs at SprintNextel Corp., and Peter Cowhey, Dean of the School of International Relations and Pacific Studies at UC-San Diego, will lead the team responsible for the transition at USTR.

II. Possible Candidates for USTR

Campaign sources have stated that the Office of the USTR under an Obama Administration will likely shift focus from a more proactive trade agenda to one centered on trade enforcement and monitoring. This shift will play a part in President-elect Obama's selection for USTR, as will the question of whether the Obama Administration will make trade a “priority issue.” Given the US and global financial climate, it is likely that trade will not be a priority item for the Obama Administration during the first half of 2009, which also lends credence to a USTR selection that will occur after other “core” Cabinet appointments.

If the Office of the USTR becomes more focused on trade enforcement, President-elect Obama may choose a USTR that is more of a “technocrat” with business experience as opposed to a candidate with a strong Congressional background; President-elect Obama will enjoy a Democratic majority in Congress which could eliminate some of the need to appoint a USTR that can establish strong ties with Congress (based on prior legislative experience). Regardless of who President-elect Obama chooses, the incoming USTR will face several trade issues vying for the Administration's attention, including: (i) increased importance on labor and environmental aspects of any future US free trade agreements (FTAs); (ii) efforts to renew Presidential Trade Promotion Authority (TPA); (iii) trade enforcement of existing FTAs; (iv) efforts to resuscitate the World Trade Organization (WTO) Doha Development Agenda negotiations; (v) passage of pending FTAs with Colombia, Korea and Panama; and (vi) trade with China, among other matters.

Our sources opine that the Obama transition team is considering the following individuals to fill the USTR position:

- **Lael Brainard**. Lael Brainard served as campaign advisor for Sen. Obama in addition to serving as Vice President and Director of the Global Economy and Development Program and holding the Bernard L. Schwartz Chair in International Economics at the Brookings Institution. Prior to her work on the Obama campaign and at Brookings, Brainard served as Deputy National Economic Adviser and Chair of the Deputy Secretaries Committee on International Economics under President Clinton's Administration. As Deputy Director of the National Economic Council, she addressed global economic challenges such as the Asian financial crisis and China's World Trade Organization (WTO) accession. Previously, Brainard served as Associate Professor of Applied Economics at the

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Massachusetts Institute of Technology Sloan School of Management, and as a consultant at McKinsey & Co. advising corporate clients on strategic challenges and on microenterprise in West Africa. She received her M.A. and doctoral degrees in economics from Harvard University. Sources opine that Brainard is the likely frontrunner in Sen. Obama's choice for USTR, and that Brainard's placement in USTR would enable an Obama Administration to focus more resources on trade enforcement and monitoring.

- **Xavier Becerra**. Rep. Xavier Becerra (D-CA) was first elected to the House of Representatives in 1992, and currently serves as Assistant to the Speaker of the House in addition to being a member of the House Committee on Ways and Means. Rep. Becerra also serves on the Health, Oversight, and Social Security subcommittees, and the House Committee on Budget. Rep. Becerra is a member of the Congressional Hispanic Caucus (CHC) where he served as Chair during the 105th Congress (1997-98) and a member of the Executive Committee of the Congressional Asian Pacific American Caucus. In addition to his Congressional duties, Rep. Becerra serves as a board member for several institutions, including the Close Up Foundation, and the Congressional Hispanic Caucus Institute. Prior to his election to Congress, Rep. Becerra served one term in the California Legislature as the representative of the 59th Assembly District in Los Angeles County. He is a former Deputy Attorney General with the California Department of Justice. Rep. Becerra received his B.A. in Economics from Stanford University and his J.D. from Stanford Law School. According to the Cato Institute's compilation of ―trade votes" on Congress, Rep. Becerra has voted in favor of sugar and cotton subsidies; in favor of several FTAs including the US-Chile and US-Bahrain FTAs; and opposed Permanent Normal Trade Relations for Vietnam, the US-Oman FTA, the DR-CAFTA, and Trade Promotion Authority (TPA). Sources opine that Rep. Becerra is one likely frontrunner in Sen. Obama's choice for USTR, but that Rep. Becerra is weighing whether to give up his House seniority for the USTR position.
- **Daniel Tarullo**. Daniel Tarullo served as a principal trade advisor for the Obama campaign and is Professor of Law at Georgetown University Law Center and a non-resident senior fellow at the Center for American Progress, run by John Podesta who now heads the Obama transition team. Tarullo held several senior positions in the Clinton Administration, including Assistant to the President for International Economic Policy, responsible for coordinating the international economic policy of the Administration, and a principal on both the National Economic Council and the National Security Council. Tarullo also served as Deputy Assistant to the President for Economic Policy, with special responsibility for regulatory and international issues. From 1993-1996, Tarullo was Assistant

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Secretary of State for Economic and Business Affairs. In March 1995, President Clinton appointed Tarullo as his personal representative to the G-7/G-8 group of industrialized nations, with responsibility for coordinating US positions for the annual Leaders Summits. Before joining the Clinton Administration, Tarullo practiced law in Washington and served as Chief Counsel for Employment Policy on the staff of Senator Edward M. Kennedy (D-MA). Tarullo received his B.A. from Georgetown University in 1973 and completed his M.A. at Duke University in 1974. Sources close to Tarullo note, however, that he may not want as public a position as USTR and may instead choose to serve as an advisor on trade to President-elect Obama.

- **Michael Wessel**. Michael Wessel served as a campaign advisor for Sen. Obama in addition to serving as a member of the US-China Economic and Security Review Commission; his term at the Commission expires on December 31, 2008. Wessel is also President of The Wessel Group Inc., a public affairs consulting firm offering expertise in government, politics, and international affairs. Prior to this, he served on the staff of House Democratic Leader Richard Gephardt (D-MO) for more than twenty years, leaving his position as General Counsel in March 1998. Wessel served as then-Rep. Gephardt's chief policy advisor, strategist, and negotiator, and was responsible for the development, coordination, management, and implementation of the Democratic Leader's overall policy and political objectives, with specific responsibility for international trade, finance, economics, labor, and taxation. Wessel holds a B.A. and a J.D. from George Washington University.
- **Richard Fisher**. Richard Fisher is the President and Chief Executive Officer of the Federal Reserve Bank of Dallas, and a former Deputy USTR. Prior to the Federal Reserve, Fisher was a vice chairman of Kissinger McLarty Associates. From 1997 to 2001, Fisher was Deputy USTR with the rank of ambassador, and he oversaw the implementation of the North American Free Trade Agreement (NAFTA), negotiations for the Free Trade Area of the Americas (FTAA), and various agreements with Vietnam, Korea, Japan, Chile and Singapore. He was also a senior member of the team that negotiated the bilateral accords for China's and Taiwan's WTO accessions. In 1987, Fisher created Fisher Capital Management and a separate funds-management firm, Fisher Ewing Partners. Fisher attended the US Naval Academy from 1967 to 1969, received his B.A. in economics from Harvard in 1971, and received his M.B.A. from Stanford University in 1975.
- **Laura Tyson**. Laura Tyson is a professor at the Haas Business and Public Policy Group at the University of California- Berkeley, and a former member of the National Economic Council and President's Council of Economic Advisors. From 2002 to 2006, she was Dean at the London Business School. Prior to that, she worked at the Law and Economics Consulting Group, at the

Institute of International Studies, and at Princeton University. From 1995 to 1996, she served as Chairman of the National Economic Council and from 1993 to 1995, she served as Chairman of the President's Council of Economic Advisors. She is also a member of several corporate boards including AT&T Inc., Eastman Kodak Company and Morgan Stanley. Her research focuses on changes in the global economy, with special focus on high-technology competition and doing business in emerging market economies. She received her B.A. in economics from Smith College and her Ph.D. in economics from the Massachusetts Institute of Technology.

- **Sandra Polaski**. Sandra Polaski is Director of the Trade, Equity and Development Program and a senior associate at the Carnegie Endowment for International Peace. Her work focuses on trade, development and employment policies. Until April 2002, Polaski served as the US Secretary of State's Special Representative for International Labor Affairs where she integrated labor and employment issues into US trade and foreign policy and served as the lead negotiator on labor provisions in the US-Jordan FTA and the US-Cambodia Textile Agreement. Prior to that, she served as director of research at the secretariat of the North American Commission for Labor Cooperation. Polaski holds degrees from the University of Wisconsin and The Johns Hopkins University School of Advanced International Studies (SAIS).
- **Calvin Dooley**. “Cal” Dooley served as a Democratic member of the House of Representatives from 1991 - 2005, representing California's 17th and 20th districts. Dooley announced is retirement in 2004. In September 2008, Dooley assumed the position of CEO of the American Chemistry Council, the trade association for American chemical companies. He previously served as the President and CEO of the Food Products Association (FPA) and the Grocery Manufacturers Association (GMA). Dooley earned his B.A. in agricultural economics from the University of California, Davis in 1977 and a M.A. in Management from Stanford University in 1987. Sources opine that Dooley has a strong “pro-trade” agenda and that his work on agricultural issues makes him a viable candidate for the Secretary of Agriculture position, in addition to USTR. Dooley is also well-liked in the Washington business community, and is active in the trade community. Dooley, however, adopted a strong free trade position as a Member of the House and also supported the 2002 “fast-track” bill developed by then House Ways and Means Chairman Bill Thomas (R-CA), which will likely put him at odds with labor unions and current Democratic members of Congress.
- **Thomas McLarty III**. Thomas McLarty serves as President of McLarty Associates, a Washington-based consulting company, as well as Chief Executive Officer of the McLarty Companies. Prior to this, he served as White House Chief of Staff for President Clinton from 1993-1994. After leaving the

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Chief of Staff position, McLarty served as a counselor to President Clinton in addition to serving as a Special Envoy for the Americas, in which capacity he helped in the creation of the North American Free Trade Agreement (NAFTA) and the Free Trade Area of the Americas (FTAA) initiative. McLarty also served for five years in on the National Economic Council. McLarty's candidacy for USTR likely depends on whether an Obama Administration will make trade a priority issue.

III. Possible Candidates for Secretary of Commerce

It is unclear if President-elect Obama considers the Secretary of Commerce a ―core" Cabinet appointment (in line with, for example, Secretary of Treasury and Secretary of Defense), but like USTR, the Obama transition team may choose to save the announcement of the new Commerce Secretary for the second or third tranche of appointments. Regarding trade, the incoming Secretary will have to balance US national interests and foreign trade, in addition to supporting Treasury with any economic plans it will implement meant to address the financial crisis. Campaign sources point to the following individuals as the likely candidates for Secretary of Commerce:

- **Bill Richardson.** William Blaine "Bill" Richardson III is the current Governor of New Mexico who is serving his second term after being re-elected in 2006. In addition to his duties as Governor, Richardson has taught courses at New Mexico State University, the University of New Mexico, Harvard University's Kennedy School of Government and the United World College. Prior to being elected governor, Richardson worked in the public sector. In 2001, Richardson assumed the chairmanship of Freedom House, a private, non-partisan organization that promotes democracy worldwide. In 1998, Richardson was unanimously confirmed by the United States Senate as Secretary of Energy, and he oversaw and reformed the Department of Energy. In 1997, Richardson was nominated to be the US Ambassador to the United Nations. Prior to that, he served for fifteen years in northern New Mexico representing the 3rd Congressional District. While a congressman, Richardson served as a special envoy on many sensitive international missions. Richardson received a B.A. from Tufts in 1970 and a M.A. from Tuft's Fletcher School of Law and Diplomacy in 1971.

- **Penny Pritzker.** Penny Pritzker served as the national finance chair of Sen. Obama's Presidential campaign and is Chair of Classic Residence by Hyatt, a chain of luxury senior living communities in the United States. Pritzker is estimated to be the 135th richest person on the Forbes 400 list of "America's wealthiest," with an estimated net worth of USD 2.8 billion. In 2005, she became chair of TransUnion, a credit reporting agency. From 1991 to 1994, she was Chair of Superior Bank of Chicago. Prtizker has also served as CEO of Pritzker Realty Group and currently serves on the

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board of the Global Hyatt Corporation. She received her B.A. in economics from Harvard University in 1981 and her J.D. and M.B.A. degree from Stanford University in 1984.

- **Austan Goolsbee.** Austan Goolsbee served as an economic advisor for Sen. Obama and is an economist and the Robert P. Gwinn Professor of Economics at the University of Chicago Graduate School of Business. He is also a Research Fellow at the American Bar Foundation, Research Associate at the National Bureau of Economic Research in Cambridge, Massachusetts, and a member of the Panel of Economic Advisors to the Congressional Budget Office. Goolsbee is also a Senior Economist to the Progressive Policy Institute (PPI). He earned his B.A. and M.A. in economics from Yale University in 1991 and his Ph.D. in economics from the Massachusetts Institute of Technology in 1995. Observers note that Goolsbee is known as a centrist and a problem-solver, and that he is a ―moderate supply-side" economist with centrist views on globalization that could bridge differences between businesses and labor interests

- **Jason Furman.** Jason Furman served as a senior economic adviser to Sen. Obama and worked most recently as a budget expert at the Brookings Institution heading the Hamilton Project, an economic policy research group that develops policy proposals to achieve shared economic growth. Previously he served as Special Assistant to the President for Economic Policy under economist Joseph Stiglitz in the Clinton Administration and on staff of the Council of Economic Advisers. Furman also worked with Stiglitz at the World Bank. Furman received his Ph.D. in economics from Harvard University.

IV. President-Elect Obama Nominates Secretary of Treasury

On November 24, 2008, President-elect Obama made his first official Cabinet announcement, and nominated Timothy Geithner to serve as Secretary of the Treasury. Geithner is the President and CEO of the Federal Reserve Bank of New York. In that capacity, he serves as the vice chairman and a permanent member of the Federal Open Market Committee, the group responsible for formulating US monetary policy. Prior to his work at the Federal Reserve, Geithner worked in three Administrations for five Secretaries of the Treasury in a variety of positions, and served as Under Secretary of the Treasury for International Affairs from 1999 to 2001 under Secretaries Robert Rubin and Lawrence Summers. He was director of the Policy Development and Review Department at the International Monetary Fund from 2001 until 2003. Before joining the Treasury Department, Geithner worked for Kissinger Associates, Inc. Geithner obtained his B.A. in government and Asian studies from Dartmouth College in 1983 and his M.A. in International Economics and East Asian Studies from Johns Hopkins SAIS in 1985. Geithner is also a member of the Council on Foreign Relations and the Group of Thirty.

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Chief among the incoming Secretary of Treasury's concerns will be US response to the current global financial crisis. The new Secretary will also focus on an agenda to stimulate the US economy that will likely include infrastructure projects and financial assistance for states. With regards to Treasury-related trade matters, as noted, it is unlikely that the Secretary of Treasury will devote much attention to trade – such as China currency issues – during the first half of 2009.

V. Transitions in Congress

Observers opine that President-elect Obama may engage more effectively with Congress during his Presidency – especially with the Senate – because of his Congressional background. President-elect Obama's actions on trade may also fall in line with the views Congressional Democrats share on trade (*e.g.*, the importance of labor and environment in trade negotiations, trade adjustment assistance for workers), although observers opine that the populist and anti-trade rhetoric that appeared during President-elect Obama's campaign may soften by the time he enters office.

As a result of the elections and several retirements, there were several transitions in the House of Representatives and in the Senate, notably in the House Ways and Means and Senate Finance Committees. Both Committees lost several Republican members, increasing the Democratic majorities. Congressional sources opine that the transitions are unlikely to cause any major shifts in decision-making or policy-direction because the leadership in both Committees – Chairman Charles Rangel (D-NY) heading Ways and Means and Chairman Max Baucus (D-MT) heading Senate Finance – has remained intact. We review below any transitions in the House Ways and Means and Senate Finance Committees.[1]

A. House Ways and Means Committee

The House Ways and Means Committee lost one Democratic member; Rep. Michael McNulty (D-NY) is retiring and his retirement decreases the number of Democrats on the Committee to 22. All other Democratic members were re-elected, including Chairman Charles Rangel (D-NY) and active Committee members such as Trade Subcommittee Chairman Sander Levin (D-MI), Rangel confidante Jim McDermott (D-WA), and Joseph Crowley (D-NY), among others.

[1] Please note that several members of Congress are seeking to fill the empty seats in the House Ways and Means Committee and Senate Finance Committee. We will continue to monitor any other transitions in both Committees and will update you on any further developments.

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The Committee lost eight Republican members. Outgoing Republicans include Ranking Member Jim McCrery (R-LA) who is retiring, in addition to Reps. Jim Ramstad (R-MN), Jerry Weller (R-IL), Ron Lewis (R-KY), and Thomas Reynolds (R-NY), who are also all retiring. Reps. Phil English (R-PA) and Jon Porter (R-NV) were defeated in their bids for re-election. Rep. Kenny Hulshof (R-MO) ran for governor in Missouri although he was defeated in that race.

B. Senate Finance Committee

The three Democratic members of the Senate Finance Committee up for re-election – Chairman Max Baucus (D-MT) and Sens. John Rockefeller (D-WV) and John Kerry D-MA) – were all re-elected. Of the three Republican Committee members up for re-election, only one – Sen. Pat Roberts (R-KS) – was re-elected. Sens. Gordon Smith (R-OR) and John Sununu (R-NH) were both defeated. Sen. Charles Grassley (R-IA) remains the Committee's Ranking Member.

Congressional sources note that it is unclear if Chairman Baucus will fill the seats lost by the two outgoing Republican members. Several Democratic House members, such as Sens. Tom Carper (D-DE), Benjamin Cardin (D-MD), and Evan Bayh (D-IN), have expressed their interest in joining the Senate Finance Committee, although observers opine that Chairman Baucus may want to maintain a smaller number of Committee members in order to avoid bureaucracy and complete legislative actions and consensus more quickly within the Committee.

Outlook

It seems likely that President-elect Obama's choice for USTR will take some time as he seeks to initially fill in ―core" Cabinet positions. The front-runners for the USTR appointment – Lael Brainard and Rep. Becerra – have not made any statements confirming their candidacy for the position and Obama staffers have not yet indicated when they will choose the next USTR. In appointing USTR, President-elect Obama will have to balance the expectations of a Democratic party pushing for more enforcement and monitoring of US trade agreements, supporters of his campaign (i.e., labor unions) that are more hesitant on free trade initiatives and the US business community pushing for a USTR who will move aggressively to open markets for exports. Regardless of the ultimate appointed USTR, it seems that trade will not be a focus issue for the Obama Administration in the first half of 2009, even in light of competing trade issues such as passage of pending FTAs and completion of the Doha Round.

The Secretary of Commerce position, like USTR, may not be filled until after President-elect Obama secures other ―core" Cabinet positions. The candidates that are being considered come from varied backgrounds – business, academic and political – and it will be interesting to see which one will be

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appointed, as it may provide a clue as to the direction in which the Obama Administration will travel with regards to US commercial policy.

In Congress, the transitions in the House Ways and Means and Senate Finance Committees are unlikely to result in much change in the policy direction of either committee. Leadership in both committees remains unchanged and although Democrats secured a larger margin over their Republican counterparts in both committees, the Ways and Means and Finance Committees were already exhibiting strong bipartisanship and cooperation. The “trade agenda” for both these committees in 2009 and beyond will likely remain the same as it has over the past several years.

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United States Highlights

President Bush Suspends ATPA Benefits for Bolivia Due to Lack of Anti-Drug Cooperation

On November 25, 2008, President Bush signed a proclamation suspending Bolivia's designation as a beneficiary country under the Andean Trade Preference Act (ATPA). The suspension will take place on December 15, 2008. According to President Bush's statements, Bolivia's suspension was the result of its failure to cooperate with the United States on counter-narcotic efforts, a criterion of ATPA. Observers note that the Bush Administration's move to suspend Bolivia from the ATPA stemmed from Bolivia's expulsion of US Agency for International Development (USAID) and US Drug Enforcement Agency (DEA) personnel from areas in Bolivia where illegal coca production takes place; coca is the main ingredient used to make cocaine. President Bush stated, however, that if Bolivia makes improvements on efforts to cooperate with the United States on counter-narcotic efforts, he would have the option to issue a proclamation re-designating Bolivia as a beneficiary country under the ATPA.

President Bush's proclamation on Bolivia comes shortly after Congress extended the ATPA. On October 2-3, 2008, Congress approved a bill (H.R. 7222) that would, among other things, extend the ATPA for an additional year, albeit with certain conditions for two ATPA beneficiaries: Ecuador and Bolivia. The bill would extend the ATPA program with respect to Bolivia for six months (*i.e.*, until June 30, 2009), after which preferences will expire unless the President determines that Bolivia satisfies ATPA requirements as a beneficiary country. On October 16, 2008, President Bush signed into law H.R. 7222. In signing the bill, however, President Bush also announced that he would suspend trade preferences for Bolivia until that country improves its anti-drug cooperation.

Reaction to the proclamation from Bolivian government officials was negative. Bolivian President Evo Morales accused the United States of "political vengeance" in suspending ATPA benefits, and stated that according to United Nations data, Bolivia has done a better job than Colombia and Peru in controlling the cultivation of coca. Bolivia is the world's third-biggest producer of coca after Colombia and Peru, according to the United Nations Office on Drugs and Crime.

Although the Bush Administration indicated in September that it would suspend ATPA benefits for Bolivia because of the USAID and DEA expulsions, some observers opine that the move is meant to transfer the politically-sensitive issue of Bolivia and anti-narcotics cooperation to President-elect Obama and his Administration. Regardless, the Obama Administration may find itself having to reverse President Bush's ATPA suspension decree if it decides that Bolivia has done enough in cooperating with the United States

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on anti-narcotics initiatives, and if it receives enough pressure from the US business community (and those US businesses that trade with Bolivia under the ATPA) to restore benefits to Bolivia.

Bolivian officials appear willing to improve US-Bolivian relations under the Obama Administration "if both parties engage in respectful manner." However, because Bolivia is not an important trading partner for the United States, observers opine that the Bush Administration has little economic incentive to renew ATPA benefits in the short-term, aside from any strategic considerations with regards to anti-narcotics efforts. The United States, however, is an important destination for Bolivian exports, mainly textiles, raw materials, agricultural and wood products. According to US International Trade Commission (ITC) figures, in 2007, nine percent of Bolivian exports (USD 376.8 million) under ATPA and the US General System of Preferences (GSP) were destined for the US market. Bolivian officials estimate that the removal of ATPA benefits will result in annual losses of over USD 300 million for Bolivian exporters and job losses of up to 30,000.

USTR Reorganizes Internal Structure; Moves GSP to New Office and Creates Office of Market Access and Industrial Competitiveness

During the week of October 27, 2008, the Office of the United States Trade Representative (USTR) announced a reorganization of its office structure in order "to take a more systematic approach to tackling non-tariff barriers (NTBs) to trade in foreign countries, a reflection of shifting priorities of US exporters." Deputy USTR John Veroneau announced the changes.

USTR is moving the Generalized System of Preferences (GSP) and telecommunications services issues out of the former Office of Industry, Market Access and Telecommunications. Executive Director Marideth Sandler will continue to direct and oversee the GSP portfolio which will now be under the new Office of Trade and Development (formerly known as the Trade Capacity Building Office). The telecommunications services portfolio will move to the Services and Investment Office.

The former Office of Industry, Market Access and Telecommunications will now be known as the Office of Market Access and Industrial Competitiveness (MAIC). According to DUSTR Veroneau, one focus of the new office will be on mutual recognition agreements (MRAs). MAIC will also work with US regulatory agencies so that "they understand any impact their work has on what regulators in other jurisdictions are doing and how they impact US companies doing business in those markets." USTR will also set up a subcommittee on NTBs under the Trade Policy Staff Committee (TPSC) through which USTR consults with other governmental agencies on trade policy matters. USTR will add two new positions in the MAIC:

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(i) a new Deputy AUSTR specifically tasked with handling NTBs; and (ii) a staff member reporting to the Deputy AUSTR. USTR has not yet filled the new Deputy AUSTR position.

According to USTR, the shift in the office structure arose out of the departure of two Assistant USTRs. Meredith Broadbent, who held the position of AUSTR in the former Office of Industry, Market Access and Telecommunications, is leaving USTR and is being replaced by James Sanford, who formerly served as Deputy AUSTR for Europe. Shaun Donnelly, AUSTR for Europe and the Middle East, left USTR earlier in 2008 and is being replaced by Christopher Wilson, who formerly served as Deputy AUSTR in the Office of Intellectual Property and Innovation. USTR has not yet filled the positions left vacant by Wilson or Sanford.

In addition, USTR is expanding the Office of South Asian Affairs by adding to its responsibilities trade and investment issues with Kazakhstan, the Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

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Free Trade Agreements

Deputy USTR, Foreign Ambassadors Explore Prospects for TransPacific Economic Partnership FTA

Summary

On November 6, 2008, the Council of the Americas (COA) hosted a panel discussion with US government officials and foreign ambassadors on the United States' free trade agreement (FTA) negotiations with members of the TransPacific Economic Partnership (Brunei Darussalam, Chile, New Zealand, and Singapore). Invited speakers explored the reasoning behind the FTA negotiations and the prospects for a successful conclusion. We review herein their comments.

Analysis

On November 6, 2008, COA, in conjunction with several other groups,[2] hosted a panel discussion with US government officials and foreign ambassadors on the United States' FTA negotiations with members of the TransPacific Economic Partnership (TPP) trade agreement - Brunei Darussalam, Chile, New Zealand, and Singapore.[3]

- **Deputy USTR John Veroneau** stated that US trade negotiators are faced with a difficult environment in which to push for any new FTAs, although he noted that the "TPP provides the United States with the opportunity pursue further growth with trans-Pacific trading partners." According to DUSTR Veroneau, the TPP FTA strengthens US trade relations with other like-minded Asian countries and provides US businesses with increased market access in Asia. He added that the TPP FTA supports the priority goals of the Asia Pacific Economic Cooperation (APEC), and would allow the United States to counter any FTA initiatives in Asia that do not involve the United States, such as the ASEAN+3 and ASEAN+6 FTA negotiations. According to DUSTR Veroneau, ***Australia, Peru and***

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[2] Other groups co-sponsoring the panel discussion included the Asia Society, the US-ASEAN Business Council, the Center for Strategic and International Studies (CSIS), the National Foreign Trade Council (NFTC), the Chilean American Chamber of Commerce, the United States-New Zealand Council, and the US-Russia Business Council.

[3] Brunei, Chile, New Zealand and Singapore concluded the TPP in 2005, and the agreement went into effect in late 2006. In March 2008, TPP countries began work on the outstanding Financial Services and Investment chapters; the United States joined the TPP countries in these talks. On September 22, 2008, United States Trade Representative (USTR) Susan Schwab announced the launch of negotiations for the United States to join the TPP.

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Vietnam have expressed their interest to the TPP countries and the United States in joining the FTA negotiations**;** the United States and the TPP countries have held exploratory talks with each of these economies in order to gauge next steps so as to incorporate them into the talks. DUSTR Veroneau stated that the upcoming round of TPP FTA negotiations is slated for March 2009.

- **H.E. Mariano Fernández, Ambassador of Chile to the United States** stated that free trade initiatives and liberalization provide Chile with “a way of dealing with increased globalization.” He noted that Chile is an active participant in FTA negotiations – including the current TPP FTA talks – and he stated that APEC provided Chile with a “first introduction to Asia.” He noted that the TPP FTA has enabled Chile to strengthen ties with Asian trading partners that invest in Chile, and he welcomed the United States' announcement to join the FTA negotiations because US involvement draws focus to the importance of the agreement and trans-Pacific relationships.
- **H.E. Roy Ferguson, Ambassador of New Zealand to the United States** stated that New Zealand continues to support the successful conclusion of the ongoing World Trade Organization (WTO) Doha Round, but he noted that in the absence of any movement in the multilateral negotiations, the TPP provides trans-Pacific trading partners with the opportunity to strengthen economic linkages. He opined that the TPP is “special” because it is a “high-quality, WTO-esque agreement . . . [which] an open accession clause” that enables other trading partners to negotiate and join the agreement at any point, which in turn enables the TPP FTA to further expand. He stated that the TPP FTA provides “bridges across the Pacific.” Ambassador Ferguson noted that a TPP FTA that includes the United States would result in a subsequent FTA between the United States and New Zealand, an initiative that New Zealand has long sought.
- **H.E. Chan Heng Chee, Ambassador of Singapore to the United States** described in detail the various FTA and regional trade agreement (RTA) initiatives in which Singapore is involved – individually and as a member of ASEAN – and stated that East Asia is becoming better integrated through the investment ties and intra-regional trade that result from these agreements. She opined that the TPP FTA will boost already-strong trade relations in the region, but she noted that the business community – both US and international – must be vocal in their support for the FTA in order to send a signal to their respective governments that the TPP FTA will be beneficial for businesses. Similar to statements made by DUSTR John Veroneau, Ambassador Chee stated that the TPP FTA “will stimulate East Asian trade in tune with APEC's economic goals.” She cautioned, however, that the TPP FTA – or any FTA for that matter – is not a substitute for Singapore's multilateral goals and the successful conclusion of the Doha Round. According to Ambassador Chee, the TPP FTA is

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WTO-consistent and WTO-plus, but would not replace the gains that can be achieved through a multilateral Doha deal.

Outlook

According to the panel speakers, the United States' announcement to join the TPP FTA received support from the TPP countries, the US and international business communities, and members of the US Congress, including Senate Finance Committee Chairman Max Baucus (D-MT). DUSTR Veroneau's remarks on the "difficult environment" in which US trade officials find themselves with regards to negotiating new FTAs, however, touched very lightly on concerns surrounding the TPP FTA talks. Chief among these concerns is the question whether the new Obama Administration (that assumes office in January 2009) will support the US decision to join the TPP FTA, and will allow USTR to continue these FTA negotiations. When asked if future President Obama supports the US-TPP agreement, DUSTR Veroneau did not provide a direct answer, and instead noted that USTR would continue to urge the Administration (current and future) to support all US FTAs.

Related to the question of the Obama Administration's endorsement of the TPP FTA is the concern that the new Administration will bring with it new trade priorities and new trade personnel at USTR, thus requiring a transition phase that could disrupt the talks. Indeed, aides to Sen. Obama have indicated that trade policy under an Obama Administration will focus more on trade enforcement as opposed to negotiating new FTAs. As noted, however, the United States already has FTAs in place with two TPP partners – Chile and Singapore – and New Zealand is enthusiastic about negotiating an agreement with the United States. These agreements (and would-be agreement) provide the TPP FTA with a strong foundation upon which US officials can negotiate and build a US-TPP FTA that could potentially include elements of US FTAs supported by an Obama Administration and members of Congress (*i.e.*, labor and environmental provisions). USTR's groundwork on the US-TPP FTA may also provide trade negotiators with an added advantage in that the Obama Administration may allow USTR to continue negotiations simply because so much work has been accomplished in organizing the FTA talks; negotiations will occur in March 2009, early enough in the Obama Administration that the Administration may let negotiators continue their work on the FTA. As for new USTR personnel, DUSTR Veroneau stated that USTR "has very little political appointees" and that the majority of USTR's staff is composed of career government officials; thus, he opined, there would likely be little disruption to the US-TPP FTA talks when new USTR officials assume office, and he stated that work on the agreement would likely continue without interruption.

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A major concern that was not discussed at length was the issue of Trade Promotion Authority (TPA), in this case, the United States' lack of TPA. Previous FTAs that USTR negotiated were all completed under TPA, which assured US trade negotiators and US trading partners that the US Congress would consider the completed agreements under certain time limits and without amendments. TPA expired in mid-2007 (just after the United States concluded FTA negotiations with Colombia, South Korea and Panama) and to date, the Democratic-led Congress has not indicated that it will renew TPA for President Bush or future President Obama. The lack of TPA raises two interesting questions: (i) will the United States risk completion of a US-TPP FTA without TPA in place, knowing that Congress can amend the agreement? and (ii) will TPP partners in subsequent negotiating rounds want to continue FTA negotiations without the assurances that TPA provides to the potential agreement? Even if Congress decides to provide the Obama Administration with TPA, passage of the US-TPP FTA is still not assured. The trade community is still reeling from the House of Representative's unprecedented move to eliminate the TPA-mandated timetable for consideration of the pending US-Colombia FTA on April 10, 2008. Do TPP partners see a similar action happening to the US-TPP FTA, and if they do, will they still want to complete the agreement under the ―threat" of such a similar action? The answers to these questions are unclear, but once the Obama Administration assumes office, officials may shed some more light on the environment for negotiating and concluding the US-TPP FTA. For now, however, it seems as though the United States and TPP countries intend to continue their negotiations, meeting in Singapore in March 2009 for a round of talks.

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Free Trade Agreements Highlights

Top Trade Official States TPA Rules Will End for Colombia FTA After 2008, But Will Remain in Effect for Korea, Panama FTAs

On November 17, 2008, United States Trade Representative (USTR) Susan Schwab delivered remarks at the Club for Growth on the future of US trade policy. USTR Schwab's discussed a wide range of trade issues, including US involvement in the World Trade Organization (WTO) Doha Round and the US bilateral agenda, especially with regards to the status of the three pending US Free Trade Agreements with Colombia, Panama and South Korea. According to USTR Schwab, if Congress does not pass the US-Colombia FTA by the end of 2008, the next Congress will have to consider the bilateral agreement without rules as dictated under Trade Promotion Authority (which expired in mid-2007). She added, however, that the next Congress could choose to adopt special rules specific to the US-Colombia FTA that would dictate how legislators would consider the agreement.

USTR Schwab also noted that although TPA requirements will expire for the US-Colombia FTA after 2008, the pending US-Panama and US-South Korea FTAs will continue to retain their ―TPA status" because the Bush Administration did not deliver implementing bills for either of these agreements to Congress. According to USTR Schwab, the Panama and Korea agreements could be ratified under TPA rules anytime by Congress over the next several years when an Administration submits the implementing bills for the agreements to legislators.

The fate of the US-Colombia FTA has hung in the balance since the House of Representatives' April 2008 move to eliminate the TPA-mandated timeline that came along with the agreement. Although the Bush Administration submitted the agreement to Congress under TPA, on April 10, 2008, the House of Representatives approved a resolution (H. Res. 1092) that eliminated the TPA-mandated timetable under which the House of Representatives must consider the US-Colombia FTA. The House approved the resolution by a vote of 224 to 195 along mainly party lines. On April 9, 2008, Speaker of the House Nancy Pelosi (D-CA) announced and presented to the House of Representatives H. Res. 1092. The resolution suspended two provisions of the Trade Act of 1974 regarding TPA rules: sections 151(e)(1) and 151(f)(1) that address the timetable that the House of Representatives must follow in considering the US-Colombia FTA. The resolution was specific only to the US-Colombia FTA and did not apply to the other pending US FTAs with Panama and Korea that were also completed under TPA.

Confusion over TPA rules as they apply to the pending FTAs is at an all-time high because the United States has yet to experience a situation wherein Congress will adjourn without having voted on pending

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FTAs completed under TPA. An exiting Bush Administration and an incoming new Administration have only added to the confusion. USTR Schwab's statements on whether TPA rules will apply to the pending FTAs are the latest in the long-running debate on whether ―fast-track" rules will or will not die once the new Congress and Obama Administration assume office. Observers note that members of Congress have looked to both the House and Senate Parliamentarians for their interpretation of TPA and the pending agreements; the Parliamentarians have offered two arguments: (i) that TPA rules will remain in effect for the pending agreements in the new Congress; and (ii) that TPA rules will be eliminated at the end of 2008, thus leaving the pending agreements open to amendment in the next Congress. USTR Schwab's statements, however, point to the possibility of at least two of the pending agreements enjoying TPA status ―over the next several years." Under this assumption, an Obama Administration could (in theory) present the Panama and Korea agreements to Congress in 2009 or beyond, and expect that Congress will consider them under TPA. That said, if Congress' April 2008 move to eliminate TPA for the Colombia FTA is indicative of anything, it is that the Democratic leadership could call for a similar action for the other agreements when they are presented. It is unclear at this moment if such a scenario (*i.e.*, Congress eliminating TPA timelines and rules for the Korea and Panama agreements, similar to what id did for the Colombia agreement) could take place, but observers have opined that it is a remote possibility.

As for the Colombia FTA, although USTR Schwab noted that TPA rules will not apply to the agreement after 2008, she did opine that the next Congress could adopt rules specific to the consideration of the Colombia FTA that would, in effect, serve as a replacement for an expired TPA. Congressional observers are uncertain if a Democratic-led Congress would adopt rules that limit the consideration time and amendments made to the bilateral agreement, especially in light of Democratic concerns on the labor situation in Colombia. That said, some observers opine that Democratic leaders cut the TPA timeline for the Colombia agreement in the first place because of partisan differences with the Republican Administration, and as a way to ―punish" President Bush. These observers opine that a Democratic Congress may be more responsive to a Democratic President (*i.e.*, President-elect Obama), and thus may adopt special rules for consideration of the Colombia FTA if the Obama Administration pushes for passage of the agreement. Thus, with prospects for the lame-duck Congress to consider the Colombia FTA fading, it may be up to the next Administration and Congress to deliberate and pass these pending FTAs – with our without TPA rules.

Costa Rica Approves DR-CAFTA, Eyes January 2009 Implementation

Press sources report that on November 11, 2008, Costa Rica's Legislative Assembly approved the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA). Costa Rica is the last of the

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seven DR-CAFTA signatories to implement the agreement. The United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua signed the DR-CAFTA on August 5, 2004. The United States and El Salvador put the DR-CAFTA into force on March 1, 2006. The agreement entered into force for Honduras and Nicaragua on April 1, 2006, for Guatemala on July 1, 2006, and for the Dominican Republic on March 1, 2007.

The DR-CAFTA establishes a two-year period for signatory countries to join the agreement after it first takes effect. However, a country may join after the two-year deadline, but only if the countries that have already joined agree to extend the deadline. According to USTR, Costa Rica approved the DR-CAFTA in a national referendum in October 2007. In February 2008, DR-CAFTA signatories agreed to provide Costa Rica until October 1, 2008 to ratify the DR-CAFTA. Although the Costa Rican Congress approved the 12 laws necessary to implement DR-CAFTA, the country missed the October 1, 2008 deadline to implement the agreement after the country's Supreme Court ruled on September 11 that the Legislative Assembly improperly approved an intellectual property right bill without consulting with the country's indigenous populations on the legislation, thus violating the country's obligations under the International Labor Organization (ILO) Convention No. 169. Costa Rica's new deadline to implement DR-CAFTA is December 31, 2008.

According to reports, implementing legislation for the DR-CAFTA had also been stalled in Costa Rica's Legislative Assembly because of provisions that allowed for competition against the country's state-run insurance and telecommunications industries and because of certain intellectual property right (IPR) issues. Lawmakers, however, were able to reach agreement, including a reduced jail time for vendors of pirated products and allowing schools to make copies of some IP materials. According to Costa Rican officials, passage of the DR-CAFTA will likely ensure that the agreement takes effect for Costa Rica by January 1, 2009.

Administration, Congress Still Have Not Struck Deal on US-Colombia FTA or Lame-Duck Consideration of the Agreement

The Bush Administration continues to urge Congress to pass the pending US-Colombia FTA before President Bush leaves office in January 2009. Legislators, however, have not indicated whether they will consider the agreement during a lame-duck session or if there will even be a lame-duck session in mid-November. Observers note that Democrats are seeking to advance an economic stimulus package that the Bush Administration has so far resisted, and they opine that the US-Colombia FTA could be a "bargaining chip" through which the White House secures passage of the agreement in exchange for passage of the stimulus package.

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Administration and Congressional representatives, however, have been quick to state that the Administration and Congress have not yet reached an agreement and that the “exchange” is only an idea that both sides are exploring. President-elect Obama’s incoming chief of staff, Rep. Rahm Emanuel (D-IL) opined that the stimulus package and the FTA should not be linked because both are separate or unrelated issues. Senate Finance Committee Chairman Max Baucus (D-MT) stated that Democrats were unlikely to take up the Colombia FTA in a lame-duck session because of other “pressing issues.” Meanwhile, at the House of Representatives, plans for a House lame-duck session are still up in the air, although Speaker of the House Nancy Pelosi (D-CA) has written to House members informing them that there is “the possibility that the House may be in session during the week of November 17th.” House members will be officially notified of a lame-duck session by November 14, although Speaker Pelosi has made no official statement on whether the House will consider the Colombia FTA if it holds a lame-duck session.

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Customs

Customs Highlights

FDA Authorizes Detention of Milk and Milk-Containing Products from China

The United States Food and Drug Administration (FDA) Office of Regulatory Affairs has ordered detention at the border of all Chinese imports of milk products, milk derived ingredients and finished food products containing milk, effective immediately. Importers will be required to obtain certifications from third-party laboratories that the shipment does not contain melamine or cyanuric acid before the goods are released by US Customs. On November 12, 2008 the FDA issued an alert in response to recent reports that melamine-contaminated milk products in China have caused more than 53,000 illnesses, nearly 13,000 hospitalizations, and at least 4 infant deaths. Although infant formula was initially identified as the source of the contamination, the Chinese government has since discovered contaminated milk products, including milk components used to manufacture a variety of food products. The alert adds that FDA analysis has also detected melamine and cyanuric acid in “a number” of milk or milk-containing products, including candy and beverages. The alert authorizes blanket detention of all such products and identifies appropriate screening criteria to secure the release of any detained products.

US Customs may release individual shipments of detained products only if the importer can provide (i) results of a third-party laboratory analysis of a representative sample from the shipment which verifies that the product contains no melamine or cyanuric acid, or (ii) English language documentation that demonstrates that the shipment contains no milk or milk-derived ingredients. The detention order will likely affect a wide range of products including snack foods, cheese products, ice cream products, soft drinks, soft candies, baby food products, and pet foods. It will also impose significant delays on shipments of subject products, as the mandatory tests required by the FDA will take time to conduct and review.

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Multilateral

Multilateral Highlights

Brazil, Thailand Separately Request WTO Consultations with United States Over “Zeroing” Used in Anti-Dumping Investigations

Press sources indicate that on November 25, 2008, Brazil sent a notification to the World Trade Organization (WTO) requesting consultations with the United States over the US Department of Commerce’s (DOC) use of its “zeroing” methodology in a dumping investigation involving imports of Brazilian orange juice. In its consultation request, Brazil alleges that the DOC used zeroing in an administrative review of the dumping order on Brazilian orange juice issued on August 11, 2008, with a period of review covering August 24, 2005 to February 28, 2007. DOC found a 4.81 percent margin of dumping through the review. Brazil argues that the margin is inflated because of zeroing. Brazilian Ministry of Foreign Affairs officials noted that Brazil’s decision to request consultations with the United States reflects the Brazilian perception that zeroing is non compliant with WTO regulations, and that it causes serious damage to Brazilian exporters. Brazil and the United States will now formally consult on the matter. If consultations fail to resolve the dispute within 60 days (*i.e.*, by January 24, 2009), Brazil may request that the WTO Dispute Settlement Body (DSB) establish a panel to determine whether the United States is in compliance with its WTO obligations.

Separately, press sources indicate that on November 26, 2008, Thailand sent a notification to the WTO requesting consultations with the United States over DOC’s use of its “zeroing” methodology in a dumping investigation involving imports of polyethylene retail carrier (PRC) bags from Thailand. In its consultation request, Thailand alleges that the DOC used zeroing in determining a final antidumping order on PRC bags from Thailand in June 2004, and that the use of zeroing violates the WTO Agreement on Anti-Dumping Measures. Thailand and the United States will now consult on the matter. If consultations fail to resolve the dispute within 60 days (*i.e.*, by January 25, 2009), Thailand may request that the WTO DSB establish a panel to determine whether the United States is acting consistently with its WTO obligations.

Zeroing refers to the practice whereby an investigating authority discounts the 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 the export price of the product is higher than the price in the exporting country and zeroing is used, investigating authorities do not give any credit for negative dumping margins. The investigating authority does not average

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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.

The consultation requests add two more disputes to the United States' running list of “zeroing”-centric clashes with trading partners. To date, there have been more than a dozen disputes regarding the DOC's zeroing methodology. Observers note that the WTO Appellate Body has repeatedly found that DOC's zeroing in original investigations, periodic reviews, sunset reviews and new shipper reviews does not comply with US WTO obligations, and has previously ruled against DOC zeroing methods in disputes such as *United States - Measures Relating to Zeroing and Sunset Reviews* (DS322), *United States - Laws, Regulations and Methodology for Calculating Dumping Margins* (DS294) and *United States - Final Dumping Determination on Softwood Lumber from Canada* (DS264), among others. In face of these adverse decisions, however, US officials continue to defend the zeroing methodology. On November 20, 2008, General Counsel for the Office of the United States Trade Representative (USTR) Warren Maruyama, for example, criticized the Appellate Body as “overreaching” in dispute settlement cases, and he argued that the WTO's decisions on zeroing “lack foundation in the WTO's Antidumping Agreement.” US officials will likely continue to present arguments against the WTO's adverse views on zeroing during these latest disputes with Brazil and Thailand.

United States, EC and Canada Sign MOUs with China to Resolve Financial Information Services Dispute

On November 13, 2008 the Chinese government signed separate memoranda of understanding (MOU) with the governments of the United States and Canada and with the European Commission (EC) to resolve a World Trade Organization (WTO) dispute regarding measures the Chinese government had enacted to govern the distribution of financial information services. The United States, EC and Canada have alleged that these measures violate China's commitments under its WTO Accession Protocol and under the General Agreement on Trade in Services (GATS). The EC further alleged that the measures appear to violate a commitment under the Trade-Related Aspects of Intellectual Property Agreement (“TRIPs Agreement”). The United States requested consultations with China regarding the measures on March 3, 2008, and the EC requested to joint the consultations on March 14 (DS373); Canada requested separate consultations with China on June 20 (DS378). All three requests alleged that the September 2006 *Measures for Administering the Release of News and Information in China by Foreign News Agencies* (“the 2006 Measures”), which China issued via the state-owned Xinhua News Agency, and certain other measures restrict foreign news agencies' business practices in China. Together these

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measures require foreign news agencies to apply to Xinhua for approval to distribute news in China. They also prohibit foreign news agencies from directly soliciting services to potential subscribers and prohibit foreign news agencies' subscribers from directly subscribing to, editing or publishing news or information released by a foreign news agency. Instead, the measures require both parties to sign distribution or subscription agreements with a –designated entity," which is subject to Xinhua's approval, and require foreign news agencies and their designated entities to submit to Xinhua annual reports that detail their operational activities. News agencies or designated entities that fail to pass annual examinations based on these reports are prohibited from continuing to release news and information. The designated entities thus serve as intermediaries between foreign news agencies and their subscribers, while Xinhua, which is direct competition with foreign news agencies, serves as the sole regulatory and approval agency for both foreign news agencies and their designated entities.

Under the MOU China signed with the United States, China agreed that its State Council will authorize by January 31, 2009 a new financial information services regulator that is separate from, and not accountable to, any supplier of financial information services. China also agreed to implement by June 1, 2009, a set of new measures to replace the 2006 Measures. The new measures will (i) permit foreign news agencies to supply financial information services directly or indirectly, without going through a designated entity, (ii) require foreign news agencies to submit to the new regulatory agency only such information as is relevant to the agency's regulatory function, and (iii) grant equal treatment to foreign and domestic financial information services suppliers. Further, China will ensure that its laws and regulations do not prohibit foreign information services suppliers from establishing local operations in China. China further agreed to allow the United States a –reasonable period" to comment on any proposed measure to implement China's commitments under the MOU prior to the measure's finalization.

The MOU marked the third time that the United States and China have solved a WTO dispute through consultations: the two sides also resolved a 2004 dispute on Chinese tax measures on semiconductors (DS309) and a 2007 dispute on China's alleged illegal subsidization of a number of domestic industries (DS358). The Office of the United States Trade Representative (USTR) hailed the MOU as proof that the WTO and the multilateral trading system are capable of successfully resolving disputes between the United States and its trade partners. Reliance on dialogue and existing avenues for addressing disputes—such as the WTO's dispute settlement mechanism and US trade laws—has long been a key element of the Bush Administration's trade policy and its management of the bilateral economic relationship with China. This approach differs from that proposed by many Congressional Democrats, who have called for measures to strengthen the United States' trade enforcement by making it easier for

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the Department of Commerce to apply countervailing duties to non-market economies (NMEs) such as China. Other proposed measures have targeted China's alleged manipulation of its currency, the renminbi, and if passed would have required the Administration to take specified actions against China, including through the WTO or International Monetary Fund (IMF). During the campaign, President-elect Obama indicated his support for such measures and called on China to stop "manipulating" the renminbi; however, it remains unclear whether such campaign rhetoric will translate into actual policy once he is sworn into office in January 2009. It also remains unclear whether President-elect Obama will continue the Bush Administration's approach to the Sino-US economic relationship, which has focused on regular high-level and working-level communication through the US-China Joint Commission on Commerce and Trade (JCCT) and the Strategic Economic Dialogue (SED). President-elect Obama has not stated whether he plans to institutionalize the SED, a creation of the Bush Administration, or launch a new high-level dialogue to replace it. In a November 8, 2008 telephone conversation with President-elect Obama, Chinese President Hu Jintao reportedly signaled China's willingness to maintain exchange and contacts at all levels and to continue "strategic dialogue" with the United States. The US-China Business Council, which represents some 250 member companies with operation in China, has also expressed support for the Obama Administration's continuation of the SED.

CSUSTL Urges Administration to Appeal Recent WTO Panel Decision on "Zeroing," Hold Off on Implementing Other Zeroing Decisions

In a November 3, 2008 letter to United States Trade Representative (USTR) Susan Schwab and Secretary of Commerce Carlos Gutierrez, the Committee to Support US Trade Laws (CSUSTL) urged the Bush Administration to file a timely appeal to the World Trade Organization (WTO) panel decision in *US – Continued Existence and Application of Zeroing Methodology* (DS350), which found that the US simple and model "zeroing" methodology used by the Department of Commerce in 18 cases involving imports of EU ball bearings and anti-friction bearings, among other products, was WTO-inconsistent. The United States has 60 days from the issuance of the final decision to appeal the panel ruling.

Regarding DS350, the letter states that the panel decision in October did not find that the US zeroing methodology specifically violated WTO obligations, but that instead, the panel said it was important to provide security to the multilateral trading system and prompt dispute resolution. According to the letter, "the panel majority admitted that, but for the series of Appellate Body decisions finding the US methodology WTO-inconsistent, the panel would have found the US methodology permissible." The letter states that the United States should not "concede defeat on zeroing" and that "the WTO dispute settlement system does not have the authority to impose new obligations on the United States."

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According to the letter, “implementation of the series of adverse WTO decisions on zeroing would unfairly force the US government, but not other WTO Members, to collect far less than 100 percent of the antidumping duties owed on dumped exports.”

The CSUSTL also urged the Administration to consider requesting a waiver for implementation of other WTO zeroing decisions until the conclusion of the Doha Development Round; according to the letter, Marrakesh Agreement Article IX:3 provides for a waiver of implementation obligations in “exceptional circumstances.” The specific disputes for which the CSUSTL is urging the Administration to request a waiver include Dispute Settlement Body (DSB) rulings or recommendations in *US –Zeroing I (EC)* (DS294), *US – Zeroing (Japan)* (DS322), and *US – Stainless Steel (Mexico)* (DS344).

CSUSTL is “an organization of companies, trade associations, labor unions, workers, and individuals committed to preserving and enhancing US trade laws.” Its membership includes companies in the manufacturing, technology, agriculture, mining and energy, and services sectors. More than 80 groups signed the letter, including the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO), the Coalition for Fair Lumber Imports, the Crawfish Processors' Alliance, Manufacturers for Fair Trade, the National Cotton Council, the NewPage Corporation, the Nucor Corporation, the Southern Shrimp Alliance, the Steel Manufacturers Association, The Timken Company, and United Steelworkers.

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