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Japan External Trade Organization  
WTO and Regional Trade Agreement Monthly Report

IN THIS ISSUE

United States	1	Multilateral	49
Free Trade Agreements	22		

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## Table of Contents

Summary of Reports.....	iii
Reports in Detail.....	1
United States.....	1
Cato Institute Explores Benefits of Unilateral Liberalization in Wake of Failed Doha Round .....	1
<i>United States Highlights</i> .....	4
United States Seeks Deadline For Mexico to Comply with WTO Ruling on Soft Drinks and Imported Beverages.....	4
Members of Congress Sound Off on TPA, Doha Round, Oman FTA, Vietnam PNTR .....	4
USTR Cautious on U.S.- Japan Beef Agreement; Senators Target China on Market Access for U.S. Beef.....	6
House to Consider Oman FTA in July; Consideration of Peru and Vietnam Agreements Will Depend on House “Dynamics” Following Oman FTA.....	8
USTR Announces Creation of New IP Office, New China Trade Enforcement Consul.....	9
Peru President-Elect’s Party Hints at Endorsing U.S.-Peru FTA.....	10
U.S., Japan Reach Beef Agreement; U.S. Lawmakers Remain Skeptical.....	11
Deputy USTR: U.S., India Could Advance Legal Services, Agriculture Positions Through Trade Policy Forum.....	13
USTR Requests Comments on Special Provincial Review of China’s IPR Enforcement.....	14
Vietnam PNTR Legislation Introduced; Timeframe for Congressional Consideration Uncertain.....	14
USTR Schwab Names New Chief of Staff .....	15
“Trade Law Reform Act of 2006” Text Released; Legislation Would Alter Trade Negotiations, WTO Dispute Settlement .....	16
Senate Approves Schwab’s Nomination to USTR .....	17
Rep. English Introduces “Trade Law Reform Act of 2006”.....	18
Schumer Releases Hold on Schwab’s USTR Nomination .....	19
Sen. Schumer Blocks Senate Vote on Schwab’s USTR Nomination .....	20
Free Trade Agreements .....	22
U.S. and Korean Negotiators Complete First Round of FTA Talks .....	22
U.S. and Malaysia Complete First Round of FTA Negotiations.....	25
U.S. and India Convene U.S.-India Trade Policy Forum Ministerial Meeting .....	29
Senate Finance Committee Holds Hearing on U.S.-Peru Trade Promotion Agreement .....	31
<i>Free Trade Agreement Highlights</i> .....	36
Senate Passes U.S.-Oman FTA, 60 to 34 .....	36
House Ways and Means Committee Schedules Peru FTA Hearing, Peruvian Congress Approves Agreement.....	37
Senate Finance Committee Approves Oman FTA Amid Democrats’ Anger On Slave Labor Amendment .....	38
Sen. Baucus Warns of Difficult Issues in KORUS FTA.....	39
U.S., Colombian Presidents Meet to Discuss Outstanding Issues in U.S.- Colombia FTA .....	40

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U.S. and Rwanda Sign TIFA.....	41
Deputy USTR Bhatia: U.S. Ready to Explore BITs, TIFAs with African Nations, But Too Soon for FTAs .....	42
U.S. and South Korea Hold First Round of FTA Talks, Attempt to Resolve Easy Issues First.....	44
House Democrats Urge Comprehensive South Korea FTA; Senators Demand Removal of South Korean U.S. Beef Ban .....	45
Multilateral .....	48
<i>Multilateral Highlights</i> .....	48
G-6 Meeting Concludes on Disappointing Note With U.S., EU Standoff Remaining.....	48
Lamy Circulates Agenda for Geneva Ministerial Talks in Agriculture, NAMA .....	49
U.S. and EU Officials Blame Each Other For Lack of Flexibility in Agriculture Negotiations.....	52
EU, G-10 Reach Tentative Agreement on “Sensitive” Agriculture Products; USTR Maintains Firm Stance on Agricultural Market Access.....	53
WTO Agriculture and NAMA Chairmen Circulate Draft Modalities Texts .....	54
U.S. Blocks Ecuador Request for WTO Dispute Panel in Zeroing Case.....	55
U.S. Reduces Agricultural Market Access Demands, Considers New Concessions to Kickstart Doha Round.....	56
China Announces July 1 Automobile, Auto Parts Tariff Reduction.....	57
June 14 Agriculture Meeting Produces Nothing; U.S. Officials Stand Firm on Current Agriculture Offer.....	58
China Presents Developing Country Proposal, Receives Negative Response .....	60
WTO’s Lamy Meets with U.S. Agriculture Groups, Discusses State of Doha Negotiations .....	61
Chambliss, U.S. Farm Groups Urge U.S. To Resist Demands for Deeper Cuts; WTO Ag Chair Rushing to Complete Draft Text on Modalities .....	62
USTR Official Urges Greater Asian Cooperation in Doha Round, Voices Support for Asian Trade Relationships .....	63
Mexico Requests New Consultations with U.S. on Stainless Steel Dispute.....	65
Lamy Announces Ministerial Meeting to Advance WTO Talks; Falconer Releases More Agriculture Reference Papers.....	66
U.S. and Vietnam Sign Bilateral WTO Accession Deal.....	67
U.S.-Russia Bilateral WTO Accession Talks Progressing But Timeframe for Completion Remains Uncertain .....	68

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## Summary of Reports

### United States

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#### **Cato Institute Explores Benefits of Unilateral Liberalization in Wake of Failed Doha Round**

On June 21, 2006, the Cato Institute hosted a panel on “U.S. Trade Policy in the Wake of Doha.” Professor Jagdish Bhagwati presented the case for the United States to liberalize unilaterally its domestic trade regime without seeking to extract “maximum concessions.” His comments came in response to the World Trade Organization’s (WTO) troubled Doha Round of multilateral trade negotiations. We review here his assessments.

#### ***United States Highlights***

We want to alert you to the following United States developments:

- United States Seeks Deadline For Mexico to Comply with WTO Ruling on Soft Drinks and Imported Beverages
- Members of Congress Sound Off on TPA, Doha Round, Oman FTA, Vietnam PNTR
- USTR Cautious on U.S.- Japan Beef Agreement; Senators Target China on Market Access for U.S. Beef
- House to Consider Oman FTA in July; Consideration of Peru and Vietnam Agreements Will Depend on House “Dynamics” Following Oman FTA
- USTR Announces Creation of New IP Office, New China Trade Enforcement Consul
- Peru President-Elect’s Party Hints at Endorsing U.S.-Peru FTA
- U.S., Japan Reach Beef Agreement; U.S. Lawmakers Remain Skeptical
- Deputy USTR: U.S., India Could Advance Legal Services, Agriculture Positions Through Trade Policy Forum
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- Sen. Schumer Blocks Senate Vote on Schwab’s USTR Nomination

### **Free Trade Agreements**

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#### **U.S. and Korean Negotiators Complete First Round of FTA Talks**

On June 9, 2006, U.S. and Korean negotiators concluded the first formal round of U.S.- Korea (KORUS) Free Trade Agreement (FTA) negotiations in Washington, DC. Trade officials from both sides discussed their respective draft agreements and reportedly agreed on 40 percent of a final agreements’ contents, producing a consolidated draft text for all but four sectors. Negotiators also identified difficult issues to address in future rounds including agriculture, sanitary and phytosanitary (SPS) measures, textiles, automobiles, pharmaceuticals and the origin of goods produced in the Kaesong Industrial Complex. Both sides will meet in Seoul, Korea July 10-14 for a second round of talks.

#### **U.S. and Malaysia Complete First Round of FTA Negotiations**

On June 12, 2006, U.S. and Malaysian officials met in Kuala Lumpur, Malaysia for the first official round of bilateral Free Trade Agreement (FTA) negotiations. Officials from the Office of the United States Trade Representative (USTR) discussed several issues with their Malaysian counterparts including financial services liberalization and auto trade. Sources note that Malaysia’s reluctance to open its auto and banking sectors, as well as intellectual property (IP) infringement and Malaysian government procurement issues, remain the most contentious issues. Both sides will next meet on July 17 in Washington, D.C. for the negotiations’ second round.

#### **U.S. and India Convene U.S.-India Trade Policy Forum Ministerial Meeting**

On June 22, 2006, United States Trade Representative (USTR) Susan Schwab and Indian Minister of Commerce and Industry Kamal Nath chaired the third round of ministerial talks under the United States-India Trade Policy Forum (TPF) in Washington, DC. During the one-day meeting, the U.S. and Indian

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trade ministers discussed bilateral economic issues such as: (i) agricultural trade; (ii) investment; (iii) trade in services; and (iv) improvement of intellectual property protection.

### **Senate Finance Committee Holds Hearing on U.S.-Peru Trade Promotion Agreement**

On June 29, 2006, the Senate Finance Committee held a hearing on the U.S.-Peru Trade Promotion Agreement (PTPA). The hearing included **on-the-record** oral testimony from government and business representatives. We review below this testimony and the discussion between the Committee and witnesses.

The full text of the witnesses' statements is available on the Committee website at: <http://finance.senate.gov/sitepages/hearing062906a.htm>.

### ***Free Trade Agreements Highlights***

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- House Ways and Means Committee Schedules Peru FTA Hearing, Peruvian Congress Approves Agreement
- Senate Finance Committee Approves Oman FTA Amid Democrats' Anger On Slave Labor Amendment
- Sen. Baucus Warns of Difficult Issues in KORUS FTA
- U.S., Colombian Presidents Meet to Discuss Outstanding Issues in U.S.- Colombia FTA
- U.S. and Rwanda Sign TIFA
- Deputy USTR Bhatia: U.S. Ready to Explore BITs, TIFAs with African Nations, But Too Soon for FTAs
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## Multilateral

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- Lamy Circulates Agenda for Geneva Ministerial Talks in Agriculture, NAMA
- U.S. and EU Officials Blame Each Other For Lack of Flexibility in Agriculture Negotiations
- EU, G-10 Reach Tentative Agreement on “Sensitive” Agriculture Products; USTR Maintains Firm Stance on Agricultural Market Access
- WTO Agriculture and NAMA Chairmen Circulate Draft Modalities Texts
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## Reports in Detail

### United States

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#### **Cato Institute Explores Benefits of Unilateral Liberalization in Wake of Failed Doha Round**

##### **Summary**

On June 21, 2006, the Cato Institute hosted a panel on “U.S. Trade Policy in the Wake of Doha.” Professor Jagdish Bhagwati presented the case for the United States to liberalize unilaterally its domestic trade regime without seeking to extract “maximum concessions.” His comments came in response to the World Trade Organization’s (WTO) troubled Doha Round of multilateral trade negotiations. We review here his assessments.

##### **Analysis**

On June 21, 2006, the Cato Institute hosted a panel on “U.S. Trade Policy in the Wake of Doha: Why Unilateral Liberalization Makes Sense.” Professor Jagdish Bhagwati called on the United States to liberalize unilaterally its domestic trade regime in light of the Doha Round’s potential failure. CATO trade policy staff members Sally James and Daniel Ikenson offered their views on U.S. trade policy and the status of the Doha round.

- Professor Jagdish Bhagwati, Professor of Economics and Law at Columbia University and Senior Fellow in International Economics at the Council of Foreign Relations stated that there are two issues that must be explored when dealing with international trade: is free trade good for an economy and once free trade is deemed good for an economy, how does an economy achieve it? On the second question, Bhagwati noted that there are two ways an economy can achieve free trade: (i) through reciprocal liberalization and (ii) through unilateral liberalization. Bhagwati stated that “reciprocal liberalization” involves either negotiations on trade liberalization through multilateral channels (*i.e.*, the WTO’s Doha Round) or through bilateral channels (*i.e.*, Free Trade Agreements (FTAs) and regional agreements). He opined that reciprocal liberalization is a form of “permitted discriminatory trade arrangements” that only benefits certain parties. He stated that multilateral and bilateral agreements have grown in number in the past two decades, and their “myriad of rules and bureaucracy” has begun to confuse the agreements’ parties. He opined that unilateral liberalization is a better option than reciprocal liberalization because “going at it alone” can lead to “sequential reciprocity,” a process

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in which other countries begin their own unilateral liberalizations once one country has taken the initiative to be the first to liberalize. Bhagwati noted, however, that U.S. unilateral liberalization is “hard to achieve politically” because of the U.S. Congress’ organization and the varied domestic interests that Members of Congress represent while in office. He added that “many in Congress would block unilateral liberalization because to them, unilateral liberalization means too little benefit for many consumers and too much cost for too little producers.” According to Bhagwati, unless Congress changes the U.S. political system and related laws to represent consumers more, “U.S. officials must convince Congress that unilateral liberalization or ‘relaxed reciprocity’ can benefit U.S. producers more than they think.” Bhagwati stated that based on the political difficulty in achieving unilateral liberalization, the United States should exercise “relaxed reciprocity,” under which it accommodates other economies to achieve a final Doha Round Agreement but does not seek “the maximum concessions” in the multilateral agreement. According to Bhagwati, if the United States practices relaxed reciprocity, “it will display leadership and could spur sequential reciprocity.”

- **Sally James, Cato Institute Trade Policy Analyst**, stated that the prospects for an ambitious outcome in the Doha Round “seem bleak” because of continued disagreement among WTO Members. James added that the failure to produce a consolidated text for a Doha Round agreement is as much a “failure in execution” as it is a “failure in the WTO’s institutional framework,” which allows for “excessive concessions which in turn leads to excessive bureaucracy.”
- **Daniel Ikenson, Associate Director of Cato’s Center for Trade Policy Studies** opined that the Doha Round’s likely failure does not mean a “wholesale rejection” of trade liberalization by WTO Members, noting that countries have “found liberalization to be very popular over the past several years.” Ikenson also opined that the United States “does not need to negotiate in order to liberalize” and added that the United States could unilaterally liberalize without going through the bureaucracy of multilateral negotiations. To justify his case for U.S. unilateral liberalization, he stated that countries do not require “permission slips” to dismantle their trade barriers, and that the unilateral removal of trade barriers can strengthen both trade and foreign policy. Ikenson also stated that providing unilateral market access to the United States can strengthen relations with other countries and can spur other nations to enact their own unilateral liberalization policies. According to Ikenson, “unilateral liberalization, removed from WTO negotiations, is good for the U.S. economy” and could restore U.S. credibility abroad. He added that trade negotiations display “the asymmetries of trade power” among WTO Members, and that demanding reciprocity in trade negotiations could be harmful to the U.S. economy because it typically leads to less ambitious reductions in distorting domestic

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trade barriers. According to Ikenson, because WTO Members have too many priorities and because trading power is asymmetrical among WTO Members, the United States, in demanding reciprocity from its trading partners, “might not always get the most ideal agreement and could end up being sucked into a less-than-comprehensive multilateral agreement.” He opined that unilateral liberalization is the United States’ best option “because it provides other countries with a carrot, an incentive, to liberalize themselves and take advantage of free global trade.”

### **Outlook**

If the United States unilaterally liberalized and provided more market access to its trading partners, it could spur similar responses from other nations. However, Bhagwati’s views on the U.S. Congress are accurate. From a political perspective, it would be very difficult for Congress to approve unilateral liberalization policies because of their interest – in terms of reelection prospects – in placating influential constituents. Moreover, unless and until consumer groups gain more influence in Congress, unilateral liberalization – which would greatly benefit these consumers – will be a hard sell in Congress. Instead, “relaxed reciprocity,” in which countries are more accommodating in their market access demands and do not request maximum concessions, could be the route to follow, allowing all WTO Members to cooperate with one another in drafting a final Doha Round Agreement.

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## ***United States Highlights***

### **United States Seeks Deadline For Mexico to Comply with WTO Ruling on Soft Drinks and Imported Beverages**

On June 26, 2006, the United States circulated a request to the World Trade Organization's (WTO) Dispute Settlement Body to establish a deadline for Mexico to comply with the WTO Appellate Body's March 6, 2006 ruling that certain Mexican taxes on imported soft drinks violate WTO rules on "national treatment." The United States will hold consultations with Mexico in an attempt to agree on a WTO arbitrator who will determine the timeframe for Mexico's compliance.

Upholding a complaint by the United States, the Appellate Body in *Mexico - Tax Measures on Soft Drinks and Other Beverages* (DS308) dismissed Mexico's argument that the WTO Panel in this case should have declined jurisdiction in favor of an Arbitral Panel established under the North American Free Trade Agreement (NAFTA). The Appellate Body similarly rejected Mexico's argument that its measures were necessary to secure U.S. compliance with its NAFTA obligations.

The solution to the longstanding high fructose corn syrup (HFCS) dispute is a sensitive issue due to congressional concerns in both countries. Despite the WTO ruling, the Mexican Congress refused to repeal the 20 percent tax on HFCS in the 2006 Income Tax Law (*Miscelanea Fisca*) approved in late November 2005.

Last week, Mexican Minister of Economy Sergio Garcia de Alba hinted that Mexico would be willing to negotiate a reciprocal agreement that would match access for Mexican sugar imports into the United States with access for U.S. imports of HFCS into Mexico. Minister Garcia de Alba has reiterated that the Fox administration continues to work closely with the Mexican Congress to repeal the 20 percent tax on HFCS. However, the Mexican Congress will only consider the repeal of the HFCS tax when it debates the 2007 Income Tax Law in late November or early December. At present, it is unclear whether the current Congress or the new Congress, which will take office on December 1, will consider the 2007 Income Tax Law. However, it is clear that the next Mexican President will face a divided Congress - a factor that could further delay Mexico's compliance with the WTO ruling.

### **Members of Congress Sound Off on TPA, Doha Round, Oman FTA, Vietnam PNTR**

With a ministerial-level World Trade Organization (WTO) meeting and congressional consideration of a bilateral Free Trade agreement on this week's agenda, Members of Congress have weighed in on several

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facets of U.S. trade policy. Chairman of the Senate Agriculture Committee Sen. Saxby Chambliss (R-GA) stated on June 27 that, contrary to conventional wisdom, the failure of the WTO's Doha Round negotiations could actually "bode well" for renewing Presidential Trade Promotion Authority (TPA) in 2007. TPA is set to expire on June 30, 2007. Chambliss opined that a WTO agreement that benefits the United States "obviously" would support TPA extension or renewal because it would demonstrate TPA's effectiveness as a trade policy tool. However, Chambliss added that no WTO agreement would also enable TPA's supporters to argue for renewing the statute because without TPA the United States could not negotiate bilateral or regional trade agreements to offset Doha's failed potential. Chambliss thus concluded that the United States has "opportunities [to renew TPA] whether we have a [WTO] agreement or... don't have one."

House Agriculture Committee Chairman Rep. Bob Goodlatte (R-VA) echoed the opposition of many in Congress to a "Doha-lite" agreement, stating that "it would be better for the Administration to walk away from the WTO negotiations than to accept a bad deal." According to Goodlatte, no WTO Member or combination of WTO Members has made an agriculture proposal that "even comes close to the U.S. proposal in terms of ambition," and "there is absolutely no support in the Congress for further concessions on our part, including further concessions on market access and domestic support." He stated that "now is time for the rest of the world to step up to the challenge [laid down by the United States]. . . if they will not, then that old but accurate phrase applies: No deal is better than a bad deal." Sen. Max Baucus (D-MT), ranking Democrat on the Senate Finance Committee, also opined that no agreement would be better than a bad agreement, and that a bad agreement would be the final "nail in the TPA coffin."

Separately, Baucus criticized the Bush Administration's refusal to include an amendment denying trade preferences to products made with slave labor in the formal implementing legislation for the U.S.-Oman Free Trade Agreement (FTA). Senators Kent Conrad (D-ND), Jeff Bingaman (D-NM), and John Kerry (D-MA) sponsored the amendment. On May 18, the Finance Committee approved the measure unanimously during its "mock markup" of Oman FTA legislation; amendments approved in mock markups, however, are advisory in nature and the Administration forwarded formal legislation implementing the Oman agreement to Capitol Hill on June 26 without the forced labor amendment. Under TPA, the bill will now be subject to an up or down vote, without amendment.

Baucus opined that the Administration's move adds to the sense among certain members of Congress that the White House ignores congressional concerns on trade policy. The Administration, has argued that the amendment is unnecessary because U.S. law already prohibits the importation of goods made by forced labor. Baucus also opined that the Administration's failure to address the slave labor amendment

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will make it difficult for Congress to pass future FTAs and for the Bush Administration to renew TPA in 2007. In that regard, Baucus noted that "if one end of [Pennsylvania Avenue] doesn't respect the other end, then there's going to be repercussions." The Senate Finance Committee is scheduled to mark up the Oman FTA implementing legislation (S. 3569) today, June 28, with a possible Senate floor vote immediately thereafter. The House Ways and Means Committee will mark up its version of the bill (H.R. 5684) on June 29. House leadership has indicated that a House floor vote on the Oman FTA will occur sometime in July.

Sen. Baucus further noted that Congress should approve legislation granting Vietnam Permanent Normal Trade Relations (PNTR) before President Bush visits Hanoi in November for the Asia-Pacific Economic Cooperation (APEC) leaders' summit. Baucus added that Congress "must pass PNTR as quickly as we can [because] it would not look good for the President to go to Hanoi empty-handed." He opined that Congressional delay in approving PNTR would allow opponents time to add potentially controversial amendments to the two bills that would grant PNTR to Vietnam: (i) H.R. 5602, sponsored by Representative Jim Ramstad (R-MN) and (ii) S. 3495, sponsored by Baucus himself. Baucus also opined that concerns over human rights and religious freedom in Vietnam should not delay passage of PNTR.

Congressional Members' recent statements indicate that, despite a busy summer schedule and mid-term elections closing in, Congress continues to keep a close eye on U.S. trade activities. On the multilateral front, the Members' statements are a warning to other WTO Members that Congress will not accept a "Doha-lite" deal, and that no Doha agreement would be better than a limited agreement, in terms of TPA renewal prospects. However, Sen. Chambliss' statements on TPA indicate that, contrary to widely-held opinions and almost everything emerging from Congress thus far, renewal or extension of TPA is indeed possible, even without a Doha Agreement on the table. On the bilateral front, Baucus' statements on the Oman FTA fall in line with Democratic labor interests and should not affect the agreement's likely passage, despite Baucus' claims that the Administration's failure to address slave labor will eliminate some Democratic support. Following the Oman decision, Congress can then turn its attention to Vietnam PNTR, but congressional consideration of the Peru FTA could supersede the Vietnam vote and delay it until Fall 2006.

### **USTR Cautious on U.S.- Japan Beef Agreement; Senators Target China on Market Access for U.S. Beef**

On June 23, 2006, United States Trade Representative (USTR) Susan Schwab expressed "cautious optimism" on Japan's promises to reopen its market to U.S. beef in late July. Schwab added, however,

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that “the proof [of resolution to the beef problem] is when the trade starts flowing again, and quite frankly, unless and until the trade starts flowing again, we haven't resolved the problem.” Schwab mentioned that she met with Japan's Agriculture Minister Shoichi Nakagawa on June 23 and “stressed the importance that we move ahead with the commitments that were made related to reopening the Japanese market to U.S. beef exports,” adding that “there is a process involving Japanese inspectors and reviewing U.S. plants [and] we are optimistic that the process will go as agreed.”

On January 20, 2006, Japan reinstated its ban on U.S. beef imports after the discovery of a U.S. shipment that included beef with spine. The United States and Japan had agreed in December 2005 that Japan would resume the importation of U.S. beef; one of the agreement's terms, however, was that U.S. beef products bound for Japan would not contain backbone or vertebral column. On June 21, 2006, Japan and the United States reached a bilateral agreement, under which Japan would reopen its border to U.S. beef exports. The agreement calls for Japanese audit teams to inspect 38 U.S. meat exporting facilities from June 24 to July 21, 2006. Upon completion of successful inspections, Japan will “expeditiously” resume beef trade with the United States. Congressional reaction to the agreement has been mixed. Eight senators, led by Senator Kent Conrad (D-ND) and Senator Pat Roberts (R-KS), introduced legislation (S. 3548) on June 21 that would impose \$3.14 billion in tariffs on Japanese goods unless Japan to reopened its borders to U.S. beef by August 31. Under the bill, if the Japanese market remains closed, the Department of Treasury can impose additional tariffs on selected articles grown, produced, or manufactured in Japan in an amount equal to \$3.14 billion.

Separately, a group of 27 senators led by Sens. Craig Thomas (R- WY) and Mike Enzi (R- WY) have written a letter to Chinese President Hu Jintao urging him to reopen China's market to U.S. beef by June 30, as China promised at the April 2006 meeting of the Joint Commission on Commerce and Trade (JCCT). The letter notes that the JCCT meeting resulted in progress on beef trade and other issues, but that the Senators remain “disappointed and concerned that China has yet to take the steps necessary to allow beef exports to resume.” The letter also states that “the continued prohibition on U.S. beef and beef products is fundamentally inconsistent with the globally recognized food safety guidelines set by the [Organization International d'Epizootics, or OIE],” and that the Senators therefore urge President Hu “to quickly take the steps necessary to reestablish beef trade with the [United States].”

Congressional impatience with Japan's closed market to U.S. beef continues to build, and the Roberts-Conrad legislation is likely meant to send a message to Japanese officials that the United States will not allow the new agreement's implementation to become a drawn-out process. The legislation has little chance of actual passage, however. First, the congressional schedule is packed until the August recess,

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with the mid-term elections consuming most Members' time thereafter. Moreover, the legislation would raise concerns of World Trade Organization (WTO)-inconsistency and would certainly tarnish what has been a mostly amicable economic and political relationship between the United States and Japan. Minister Nakagawa has stated that "it is nonsense to submit punitive legislation with a timeline at this time" when Japan is readying to lift its import ban. Congressional impatience with China's ban on U.S. beef imports is also growing, but, much like Japan, Congress may have little recourse in the near-term should China not follow through with its JCCT commitments. However, given the political heft of U.S. beef producers, continued Chinese or Japanese recalcitrance regarding U.S. beef imports could lead to tangible punitive measures in the long-term.

### **House to Consider Oman FTA in July; Consideration of Peru and Vietnam Agreements Will Depend on House "Dynamics" Following Oman FTA**

On June 23, 2006, House Majority Whip Roy Blunt (R- MO) stated that he expects the House to vote on formal implementing legislation for the U.S.- Oman Free Trade Agreement (FTA) in July. He also noted that House leadership has not determined when the House would vote on the U.S.- Peru FTA or Permanent Normal Trade Relations (PNTR) with Vietnam as part of Vietnam's accession to the World Trade Organization (WTO). Blunt stated that the timing of the Vietnam and Peru votes will depend on the House vote on the U.S.-Oman FTA and on whether the House will "have the right kind of dynamics" to consider the Peru and Vietnam agreements. Blunt stated that Vietnam's PNTR status "is unlikely to move before the August recess" but added that he would like to have the House grant PNTR to Vietnam before President Bush attends the November 2006 Asia-Pacific Economic Cooperation (APEC) leaders' summit in Vietnam. The Senate Finance Committee will hold a hearing on the U.S.-Peru agreement on June 29.

Separately, several House Democrats announced on June 23 that they will join the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and some 350 other organizations in opposing the Oman agreement. These Democrats based their opposition of the Oman FTA "on the grounds that it does not help to ensure the adequate protection of workers' rights in the Gulf State."

Democrat opposition to the Oman FTA will likely delay a vote on the Oman FTA such that the House will be unable to consider the Peru FTA before its summer recess in August. The 2006 mid-term elections might further delay congressional consideration of the trade agreement, as trade issues' political sensitivities often cause them to disappear during election season. The United States and Vietnam concluded bilateral accession negotiations on May 31, 2006, thus clearing the way for Vietnam's

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accession to the WTO. However, before the United States can reap the market access benefits that will accompany Vietnam's accession, it must grant Vietnam PNTR, in accordance with WTO non-discrimination rules. Vietnamese officials have indicated that Vietnam will accede to the WTO before the end of 2006. A House PNTR vote should come before that time, but given Blunt's statements, the Peru FTA and the mid-term election cycle, the House may not consider Vietnam's PNTR until late 2006. However, President Bush's APEC visit could spur House leadership to schedule a PNTR vote before his scheduled trip in November. Should the Peru FTA still be unresolved, the Vietnam PNTR vote could leapfrog the Peru FTA vote so the President can travel to Vietnam with a completed PNTR vote in hand.

### **USTR Announces Creation of New IP Office, New China Trade Enforcement Consul**

On June 23, 2006, United States Trade Representative (USTR) Susan Schwab announced the creation of a new USTR office that will focus on Intellectual Property Rights (IPR) protection and enforcement. According to a USTR press release, Assistant USTR (AUSTR) for IPR and principal U.S. IPR trade negotiator Victoria A. Espinel will head the new office, which will assume full IPR enforcement responsibility from the Office of Services, Investment and Intellectual Property. USTR will also appoint Stanford McCoy to serve in the new IPR office as Chief Negotiator for Intellectual Property Enforcement. McCoy will focus the office's enforcement efforts in China, Russia and other countries that USTR has designated "Priority Watch List" status in its annual "Special 301" report. USTR's 2006 "Special 301" report identified "addressing weak IPR protection and enforcement, particularly in China and Russia" as "one of the Administration's top priorities."

In her current position as AUSTR for IPR Espinel develops and implements U.S. IPR trade policy, represents the United States in WTO and FTA negotiations on IPR and coordinates bilateral IPR discussions with U.S. trade partners. Prior to holding her current position, she practiced law with the London and Washington, DC offices of Covington and Burling and the New York office of Sidley, Austin, Brown and Wood. McCoy has served as an Associate General Counsel in the USTR Office of General Counsel and has advised U.S. trade negotiators on a number of IPR matters, including bilateral FTA IPR provisions, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the USTR's "Special 301" review. Prior to joining USTR, McCoy specialized in IPR enforcement and international trade law at the Brussels, Belgium and Washington, DC offices of the law firm of Covington and Burling.

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Schwab also announced the appointment of Claire E. Reade as Chief Consul for China Trade Enforcement. Reade will lead the operations the China Trade Enforcement Task Force that USTR established in February 2006. Reade currently serves as a Senior Partner in the Washington, DC office of Arnold and Porter LLP, where she focuses on international trade litigation including technical barriers to trade (TBT), international business practices and customs. She has served as co-chair of the American Bar Association (ABA) International Trade Law Review Section and is former member of the ABA Council on Asia.

Reade's appointment and the creation of the new IPR office reflect growing U.S. concerns with China's alleged inability, or refusal, to live up to its World Trade Organization (WTO) commitments, especially regarding IPR enforcement. According to Schwab, "between these two initiatives it's another step forward to ensure that the United States is active and aggressive in enforcement of our rights under trade agreements." The appointments follow a March U.S. request for WTO dispute settlement consultations with China over its treatment of U.S. auto parts imports. USTR has also warned that it might seek WTO action against China over its inadequate IPR enforcement and protection. Each of these steps is evidence that the United States has significantly changed its treatment of Chinese trade issues, moving from an era of "soft diplomacy" into one of more direct and frequent confrontation.

### **Peru President-Elect's Party Hints at Endorsing U.S.-Peru FTA**

On June 20, 2006, Partido Aprista Peruano (APRA) – the political party of Peru's President-elect Alan Garcia - hinted that would support the U.S.-Peru Free Trade Agreement (FTA). The Peruvian Congress will soon begin considering the FTA, and press sources indicate that Peruvian lawmakers could approve the agreement in the coming weeks.

On June 16, 2006, Marcial Ayaipoma, President of the Peruvian Congress, announced that the congressional spring session would be extended one month until July 15 to discuss the U.S.-Peru FTA and a compensation fund for corn, wheat, and cotton growers that will likely face strong competition from U.S. producers once the agreement enters into force. FTA approval requires a simple majority of the 120 members of the Peruvian Congress. Ollanta Humala's party, Union por el Peru, (UPP) is the largest political force in Congress, followed by Garcia's APRA's party. In recent weeks, Humala has criticized the U.S.-Peru FTA and has called on President Elect Garcia's to reject the agreement. Peruvian Vice Minister of Foreign Trade Pablo de la Flor noted recently, however, that outgoing Peruvian President Alejandro Toledo's administration hopes that the Peruvian Congress approves swiftly the FTA before the Garcia's administration takes over on July 28.

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The Office of the U.S. Trade Representative (USTR) is likely to press for U.S. congressional action on the Peruvian FTA once the agency receives assurances that the Peruvian Congress will approve the FTA. Former USTR Robert Portman stated that the U.S.-Peru FTA has "good prospects" for U.S. Congressional passage, and that he hoped Congress would approve the agreement before July 15, 2006. The United States has completed FTAs with Peru and Colombia, and the Bush Administration has indicated that it would prefer to send the agreements' formal implementing legislation to Congress for consideration and passage by the end of July 2006. However, until the Peruvian congress demonstrates that it will pass the agreement, and the U.S. Congress addresses the earlier-concluded U.S.-Oman FTA, the timeframe for congressional consideration of the Peruvian FTA will remain unclear.

### **U.S., Japan Reach Beef Agreement; U.S. Lawmakers Remain Skeptical**

On June 21, 2006, Japan and the United States reached an agreement that could lead Japan to reopen its border to U.S. beef exports. The agreement calls for Japanese audit teams to inspect 38 U.S. meat exporting facilities from June 24 to July 21, 2006. Once the audits are complete, the Japanese government will "promptly provide" the United States with their results. For facilities deemed "non-compliant," the U.S. government agreed to "confirm corrective measures necessary to bring those establishments into compliance," with the agreement's terms. Upon completion of successful inspections, Japan will "expeditiously" resume beef trade. U.S. Agriculture Secretary Mike Johanns stated that "although this agreement is another step toward the resumption of beef trade with Japan, I will not be satisfied until U.S. beef is once again accepted into the Japanese market," adding that "Japan has been conducting an exhaustive examination to confirm the safety of U.S. beef and these audits must constitute the final step." Johanns asserted that the United States has "instituted numerous changes in its system, answered every question posed by Japan, and delivered an abundance of factual, science-based assurances that U.S. beef is safe."

U.S. and Japanese officials indicated that under the agreement the U.S. government will require export-approved facilities to create a list of products that can be exported to Japan. The list shall be "clearly" described in the facilities' export verification manuals and supplier lists, and eligible product lists must be made for each of the suppliers of material products destined for Japan at fabrication-only facilities. Export facilities also must describe in their manuals several requirements, including the removal of specified risk materials, and must "thoroughly educate its management and employees" of Japan export verification requirements. Japan said that it also will conduct inspections of U.S. beef at Japanese ports, and the U.S. Department of Agriculture (USDA) will conduct spot inspections of U.S. facilities. When both countries

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implement the agreed-upon measures, Japan "will resume import procedures expeditiously" for U.S. export facilities where Japan's "initial on-site audits do not identify non-compliances." Japanese officials report that in response to the agreement, Japan expects the first cargo of American beef to arrive in late July.

Congressional reaction to the agreement has been mixed. Eight senators, led by Senator Kent Conrad (D-ND) and Senator Pat Roberts (R-KS), introduced legislation (S. 3548) on June 21 that would impose \$3.14 billion in tariffs on Japanese goods unless Japan to reopened its borders to U.S. beef by August 31. The legislation requires the Office of the United States Trade Representative (USTR) to certify that Japan has reopened its border to U.S. boneless beef from cattle under the age of 20 months and also requires USTR to provide this certification (or lack thereof) to Congress by August 31. Under the bill, if the Japanese market remains closed, the Department of Treasury can impose additional tariffs on selected articles grown, produced, or manufactured in Japan in an amount equal to \$3.14 billion. The Department of the Treasury will select goods subject to these additional tariffs at its discretion, and the tariffs would continue until USTR can certify to Congress that Japan has reopened its market.

Other congressional Members have responded cautiously to the new bilateral agreement. Senate Agriculture Committee Chairman Saxby Chambliss (R-GA) expressed his hope that the agreement "means substantive progress, not mere process." House Agriculture Committee Chairman Bob Goodlatte (R-VA) remains "only cautiously optimistic" and noted that "unfortunately, this process continues to drag on at the detriment of our producers [and] as our past has indicated, this is an unnecessarily long road and this is only one step closer to fully reopening the Japanese market to U.S. beef imports."

On January 20, 2006, Japan reinstated its ban on U.S. beef imports after the discovery of a U.S. shipment that included beef with spine. The United States and Japan agreed in December 2005 that Japan would resume the importation of U.S. beef; one of the agreement's terms, however, was that U.S. beef products bound for Japan would not contain backbone or vertebral column. The June 21 agreement comes days before a scheduled summit meeting in Washington on June 29 between President Bush and Prime Minister Junichiro Koizumi. Despite the agreement, Congressional impatience with Japan's closed market to U.S. beef continues to build, and Senator Roberts and Conrad's legislation is likely meant to send a message to Japanese officials that the United States will not allow the new agreement's implementation to become a drawn-out process. The legislation has little chance of actual passage, however. First, the congressional schedule is packed until the August recess, with the mid-term elections consuming most Members' time thereafter. Moreover, the legislation would raise concerns of WTO-inconsistency and would certainly tarnish what has been a mostly amicable economic and political

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relationship between the United States and Japan. It is thus more likely a rhetorical tool than a retaliatory weapon.

### **Deputy USTR: U.S., India Could Advance Legal Services, Agriculture Positions Through Trade Policy Forum**

On June 19, 2006, Deputy United States Trade Representative (USTR) Karan Bhatia stated that the June 22 meeting of U.S. and Indian trade officials under the U.S.-India Trade Policy Forum could advance legal services and agriculture trade. Bhatia stated he is "hopeful that we will see potentially some progress made in addressing some issues in the area of legal services," adding that the United States seeks "institution building" in the legal services sector.

U.S. and Indian officials will focus their discussions in five areas at June 22 meeting: agriculture, industrial products, services, investment, and innovation and creativity. Bhatia also noted that "high-technology trade is obviously an area of significance for both sides," and that it is "an area we're looking to grow." Bhatia opined that the meetings were unlikely to produce any "headline-grabbing news," but that the gathering of U.S. and Indian officials "would present opportunities to continue to make good progress addressing real on-the-ground kind of problems that both American and Indian firms face in accessing each other's market." The meeting will be the first major bilateral meeting that newly-appointed USTR Susan Schwab will host. U.S. and Indian officials last met in New Delhi for the fourth meeting of the U.S.-India Trade Policy Forum.

On November 12, 2005, the United States and India launched the India-United States Trade Policy Forum. Then-USTR Rob Portman and Indian Minister of Commerce and Industry Kamal Nath described the forum as a "hub" around which the two countries can strengthen economic ties and resolve bilateral trade issues. Portman envisioned that the forum will serve as an "early warning system" for any impending trade problems and a means of open communication. The Trade Policy Forum lets USTR explore the feasibility of a Free Trade Agreement (FTA) with India before announcing formal FTA negotiations. However, given the countries' differences on the Doha Round negotiations and their link to India's GSP benefits, the Indian economy's complexity, and the mid-2007 expiry of Presidential Trade Promotion Authority (TPA), it seems unlikely that the two countries will announce formal FTA negotiations anytime soon. The Trade Policy Forum has instead evolved into a bilateral dialogue in which the two countries can express and attempt to resolve their differences over bilateral and multilateral trade issues, including market access, foreign investment and the Doha Round. Sources indicate that the June 22

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meetings will focus on agriculture and legal services on both the bilateral and multilateral levels, as the United States pushes to revive the stalled Doha Round before it is too late.

### **USTR Requests Comments on Special Provincial Review of China's IPR Enforcement**

On June 16, 2006, the Office of the United States Trade Representative (USTR) announced that it will conduct a special provincial review (SPR) of Chinese intellectual property rights (IPR) protection and enforcement. As the first step in the review, USTR requests written comments from interested parties concerning the locations and issues that they believe should be the SPR's focus.

On April 28, 2006, USTR released its annual "Special 301" report in which it announced that the United States would conduct a SPR in 2006-2007 to examine the adequacy and effectiveness of China's IPR protection and enforcement at the provincial level. The goal of this review is to spotlight strengths, weaknesses, and inconsistencies in and among specific jurisdictions and to inform next year's Special 301 review of China as a whole. The information received from submissions will be used to set initial priorities for the review and "ensure that the most important locations and issues receive appropriate attention."

Interested parties must deliver submissions to USTR on or before 5 p.m. on Friday, July 14, 2006.

### **Vietnam PNTR Legislation Introduced; Timeframe for Congressional Consideration Uncertain**

On June 13, House Ways and Means Committee member Representative Jim Ramstad (R-MN) and several other members of Congress introduced legislation (H.R. 5602, "To authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Vietnam") that would grant Vietnam Permanent Normal Trade Relations (PNTR) status. Ramstad stated that he is "confident this legislation will be passed forthwith into law." He added that the United States needs "to make sure we complete what is already on our plate – the Oman and Peru agreements – as well as PNTR for Vietnam." Ranking Senate Finance Committee Member and bill co-sponsor Senator Max Baucus (D-MT) stated that he looks forward "to working with my Senate and House colleagues, the administration, and all interested parties to pass this historic bill by the August recess."

House Majority Leader John Boehner (R-OH), however, has indicated that Congress might not consider the PNTR measure in Baucus' timeframe, cautioning that "some trade legislation currently before Congress could slip until after the November elections." He noted that in addition to PNTR for Vietnam,

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Congress must also address implementing legislation for completed U.S. free trade agreements (FTAs) with Oman and Peru. Boehner opined that “the trade issue at this point is in fact difficult, and it’s difficult because of where we were trying to pass the Dominican Republic – Central American Free Trade Agreement (DR- CAFTA)] last year.” He added that “there are a lot of bruised members over getting that vote accomplished,” referring to the extremely divisive consideration of DR-CAFTA, which the House passed in 2005 by only two votes. Boehner concluded that the Vietnam PNTR legislation “is not on my near-term legislative calendar,” and that there would be further “discussions and conversations” regarding the Vietnam PNTR legislation although no decision on timing has been made.

On May 31, 2006, Deputy United States Trade Representative (USTR) Karan Bhatia and Vietnamese Deputy Minister of Trade Luong Van Tu signed a bilateral market access agreement as part of Vietnam's bid to accede to the World Trade Organization (WTO). Although not a prerequisite for Vietnam's WTO Membership, the grant of PNTR to Vietnam is necessary under WTO rules before the United States can take advantage of Vietnam's new market access commitments as part of its WTO accession.

Sources note that Vietnam's PNTR status will likely have to wait until after Congress considers the formal implementing legislation for the U.S.- Oman FTA. Congress was expected to vote on the FTA by mid-June, but that now appears unlikely, due to a May 19 letter by senior Ways and Means Democrats urging an amendment to the legislation that would ban imports made by slave labor. Because House Ways and Means Chairman Rep. Bill Thomas (R-CA) prefers to approve trade agreements in the order that they were signed, Congress will likely consider the Oman and Peru agreements before considering Vietnam's PNTR status. Thus, Senator Baucus' timeframe for Congressional consideration of the PNTR legislation might be too ambitious; instead, Congress will likely focus on Vietnam following the November mid-term elections period. If this is the case, Vietnam will accede to the WTO in late 2006 or early 2007.

### **USTR Schwab Names New Chief of Staff**

On June 12, United States Trade Representative (USTR) Susan Schwab named Timothy Keeler as USTR chief of staff. Keeler previously served as deputy to the Assistant Secretary for Legislative Affairs at the Treasury Department. Schwab stated that Keeler “has a tremendous background in trade-related issues and will bring considerable knowledge and skills to USTR” and noted that “as a veteran of the Senate Finance Committee and the Treasury Department, he also has a unique understanding of trade politics.”

Prior to his position within the Treasury Department's Office of Legislative Affairs, Keeler served on the 2001 Presidential Transition Team as a policy coordinator for the Department of Commerce's Bureau of

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Export Administration and the International Trade Commission (ITC). His responsibilities included capital market sanctions, foreign exchange rate policy testimony, authorizations of and appropriations for U.S. agreements to replenish the Multilateral Development Banks, and multilateral debt relief. From 1998 to 2001, Keeler was a professional staff member on the Senate Finance Committee dealing with international trade issues including Permanent Normal Trade Relations (PNTR) with China, preferential trade programs for sub-Saharan Africa and the Caribbean basin, and oversight of Executive Branch trade agencies.

Keeler holds a B.S.E. in Engineering Science from Tulane University and a Juris Doctor (J.D.) from the George Mason University School of Law.

### **“Trade Law Reform Act of 2006” Text Released; Legislation Would Alter Trade Negotiations, WTO Dispute Settlement**

On June 6, 2006, Representative Phil English (R-PA) introduced the “Trade Law Reform Act of 2006” (H.R. 5529). On June 8, 2006, the text of the legislation was made public. According to English, the new legislation is a “comprehensive proposal to reform and strengthen key U.S. trade remedy laws” and if enacted would create a “comprehensive strategy to reform and strengthen U.S. trade laws to provide more effective, and World Trade Organization (WTO)-consistent, remedies for U.S. workers, farmers and businesses.” As discussed in the June 8, 2006 W&C Trade Alert, the bill addressed: **(i) Amendments to U.S. antidumping (AD) and countervailing duty (CVD) laws; (ii) Amendments to the U.S. global safeguard law; and (iii) Procedures to review WTO decisions.** The Bill’s full text, however, reveals other noteworthy provisions, including:

- **International trade negotiation objectives related to U.S. trade remedy laws.** The bill states that “the United States Trade Representative (USTR) should refuse to agree to any proposal, whether in the context of a trade agreement entered into under the auspices of the World Trade Organization, or a free trade agreement with another country or group of countries, that would, either individually or in combination with other proposals, weaken existing United States trade remedy laws.”
- **Private party participation in WTO dispute settlement cases.** Under current U.S. law and WTO rules, only governments may participate formally in WTO dispute settlement cases. The Office of the USTR represents the United States in such cases. The English legislation would mandate that USTR allow “a private United States person that is supportive of the United States Government’s position before the [WTO] panel or Appellate Body and that has a direct economic interest in the panel’s or Appellate Body’s resolution of the matters in dispute” to participate formally in consultations and

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panel and Appellate Body proceedings. The bill also allows interested parties to serve as “advisory members” in the dispute settlement panel sessions and “appear before the panel, directly through counsel, under the supervision of responsible United States Government officials.”

This additional language would further alter and complicate U.S. trade laws. The bill’s mandate that USTR automatically refuse any bilateral or multilateral agreement that would “weaken U.S. trade laws” would undermine USTR negotiations with potential trading partners as part of the WTO’s Doha Round and effectively prohibit USTR from entering into any new WTO agreement related to anti-dumping, countervailing duties and safeguards. Moreover, the bill’s proposal to allow interested parties to participate in WTO dispute settlement hearings would disrupt current procedures, violate WTO rules, and potentially prolong already-complex and drawn-out disputes. Although the legislation would dramatically alter current U.S. trade laws, it likely has little chance of passage. Congress has under two months until the August recess, with election season starting thereafter. It thus appears unlikely that House and Senate committees would have sufficient time to address the legislation’s many significant provisions, and that both chambers could put the measure to a floor vote and subsequent conference (assuming passage). Moreover, Congress has in the past been unreceptive to similar trade legislation on U.S. negotiating objectives and the “weakening” of U.S. trade remedies laws. Thus, even if Congress had the time to consider the legislation, it would have little chance of garnering the support necessary for passage.

### **Senate Approves Schwab’s Nomination to USTR**

On June 8, 2006, the Senate confirmed by unanimous voice vote President Bush’s nomination of Deputy United States Trade Representative (USTR) Susan Schwab to be USTR. Senator Charles Grassley (R-IA), chairman of the Senate Finance Committee opened the floor debate and endorsed Schwab’s nomination. Senators Kent Conrad (D-ND) and Byron Dorgan (D-ND), however, voiced their opposition to Schwab’s nomination as “a protest against U.S. trade policy” but did not formally protest the confirmation vote. Schwab will likely meet with President Bush the week of June 12 to be sworn-in and to begin her term as USTR.

On April 18, 2006, President Bush selected current USTR Rob Portman to serve as the next director of the Office of Management and Budget (OMB) and nominated Deputy USTR Susan Schwab to replace Portman as USTR. As USTR, Schwab will serve as the United States’ lead trade negotiator and the public face – at home and abroad – of U.S. international trade policy. In the near-term, her primary goals will be: (i) to negotiate an ambitious agreement as part of the World Trade Organization’s (WTO) Doha Round of multilateral trade negotiations; (ii) to secure Congressional passage of the completed bilateral

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U.S. Free Trade Agreements (FTAs) with Oman, Peru and Colombia; and (iii) to complete current bilateral FTA negotiations with South Korea, Malaysia, Thailand and the United Arab Emirates (UAE) and secure their Congressional passage before Presidential Trade Promotion Authority's (TPA) mid-2007 expiry.

### **Rep. English Introduces "Trade Law Reform Act of 2006"**

On June 6, 2006, Representative Phil English (R-PA) introduced the "Trade Law Reform Act of 2006" (H.R. 5529). According to English, the new legislation is a "comprehensive proposal to reform and strengthen key U.S. trade remedy laws" and if enacted would create a "comprehensive strategy to reform and strengthen U.S. trade laws to provide more effective, and World Trade Organization (WTO)-consistent, remedies for U.S. workers, farmers and businesses." The bill's reforms fall into three categories:

- **Amendments to U.S. antidumping (AD) and countervailing duty (CVD) laws.** The bill "provides that if a foreign government is providing its domestic industry with goods or services and there is a reasonable indication that in doing so it is distorting domestic market prices for those goods or services, or if price data are otherwise unavailable, then the Department of Commerce must assess the adequacy of government prices by comparing them to price levels in other countries, adjusted to the extent practicable to account for differences between the countries in question." The bill also suspends for three years the availability of bonds for new shippers in AD cases and instead requires cash deposits "to avoid situations in which such shippers default on their obligations." The legislation also would require that Congress approve "any Department of Commerce action to graduate a country to market economy status before such action would take effect."
- **Amendments to the U.S. global safeguard law.** The bill would also create "stronger and more effective safeguard relief" through amendments to the Trade Act of 1974 that would: (i) "remove the current, unnecessarily high standard for demonstrating a causal link between imports and injury to the U.S. industry;" (ii) restructure standards to ensure that import surges are addressed more quickly and effectively; (iii) expand the availability provisional relief; and (iv) amend the International Trade Commission's injury analysis by "adding common sense factors to the injury analysis the ITC is required to conduct."
- **Procedures to review WTO decisions.** The proposed legislation would create "a mechanism by which Congress can review adverse WTO decisions and determine whether such decisions were made consistent with the rules and obligations of the WTO." The bill would establish a commission comprised of retired federal judges that would review adverse WTO panel decisions to "ensure that

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such decisions are consistent with fundamental standards of appellate review and legal reasoning” and “do not expand U.S. obligations or diminish U.S. rights under the WTO agreements.” If the commission determines that the WTO panel acted improperly in three consecutive cases, the bill would require the United States Trade Representative (USTR) to prepare a strategy to seek reform of the WTO dispute settlement mechanism.

Although the legislation would dramatically alter current U.S. trade laws, it likely has little chance of passage. Congress has under two months until the August recess, with election season starting thereafter. It thus appears unlikely that House and Senate committees would have sufficient time to address the legislation’s many significant provisions, and that both chambers could put the measure to a floor vote and subsequent conference (assuming passage). This is particularly true given that other trade legislation – namely implementing legislation for the Oman, Peru, and Colombia FTAs – would certainly have priority. It seems more likely that English – a long-time advocate of stricter U.S. trade laws and import-competing domestic industries like the U.S. steel industry – has introduced the legislation to garner political support from his political base. Like many of his colleagues in Congress, English is up for re-election in November, and the Trade Law Reform Act of 2006 can serve to remind voters of English’s “tough” stance on “unfair trade.”

### **Schumer Releases Hold on Schwab’s USTR Nomination**

On June 7, 2006, Senator Charles Schumer (D-NY) ceased blocking Deputy United States Trade Representative’s (USTR) Susan Schwab’s nomination for USTR. Schumer released his hold on the nomination following a five-minute meeting on June 7 with Schwab and Senator Lindsey Graham (R-SC) on U.S. efforts to open financial services in China. According to both Senators, upon receiving Schwab’s assurances that the Bush Administration would be tough with China on this issue, Schumer decided that he would not object to a unanimous consent agreement that would allow the Senate to vote on Schwab’s confirmation without floor debate. Schwab outlined her points on China in a May 30 letter to the Senators. Graham opined that the Senate could confirm Schwab as early as June 8, 2006.

On May 26, 2006, Schumer blocked Senate confirmation of Schwab to be the next USTR because, in his view, she had not demonstrated “sufficient willingness to aggressively confront China over its protectionist foreign investment regime.” He also stated that Schwab was “unnecessarily evasive and unhelpful” in her answers to Schumer’s China-related questions raised at her May 22 Senate Finance Committee confirmation hearing. In a letter to Schwab, Schumer stated that his “reluctance to allow [Schwab’s] nomination to be approved expeditiously and unanimously, without floor debate or roll call vote, is not

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related in any way to [her] qualifications or experience” and added that “this is a very critical time for U.S. trade relations, and I felt that [Schwab’s] responses to several of my questions at the nomination hearing, particularly as they related to China and financial services” did not ease his concerns over the growing U.S. trade deficit with China. In the letter, Schumer stated that the Senate will be able to proceed on Schwab’s nomination after she has responded to a list of “simple, straightforward follow-up questions” on the issue of Chinese financial services liberalization.

Schumer’s moves were likely a ploy to refocus attention on his concerns with Chinese currency policy. Schumer and Graham introduced legislation (S. 295) “that would assess a 27.5 percent tariff on all Chinese imports” if China does not address its alleged currency manipulation. The vote on the bill has been delayed several times, and Sen. Charles Grassley’s (R-IA) introduction of competing legislation (the “United States Trade Enhancement Act of 2006” (S. 2467) meant to strengthen U.S. trade enforcement and increase Congressional involvement in trade enforcement) had neutralized most Congressional support for, and attention to, the Schumer-Graham bill. Schumer’s latest actions indicate that he will not stand down on the China issue and will utilize any and all means to express his views on Chinese currency policy and to refocus attention on his legislation.

### **Sen. Schumer Blocks Senate Vote on Schwab’s USTR Nomination**

On May 26, 2006, Senator Charles Schumer (D- NY) blocked Senate confirmation of Susan Schwab to be the next United States Trade Representative (USTR) because she allegedly has not demonstrated “sufficient willingness to aggressively confront China over its protectionist foreign investment regime.” He also stated that Schwab was “unnecessarily evasive and unhelpful” in her answers to Schumer’s China-related questions raised at her Senate Finance Committee confirmation hearing on May 22. In a letter to Schwab, Schumer stated that his “reluctance to allow [Schwab’s] nomination to be approved expeditiously and unanimously, without floor debate or roll call vote, is not related in any way to [her] qualifications or experience” and added that “this is a very critical time for U.S. trade relations, and I felt that [Schwab’s] responses to several of my questions at the nomination hearing, particularly as they related to China and financial services” did not ease his concerns over the growing U.S. trade deficit with China. In the letter, Schumer stated that the Senate will be able to proceed on Schwab’s nomination after she has responded to a list of “simple, straightforward follow-up questions” on the issue of Chinese financial services liberalization.

Senate Finance Committee Chairman Sen. Charles Grassley (R- IA) was highly critical of Schumer’s decision, accusing him of “playing games with Schwab’s nomination” at a critical time in World Trade

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Organization (WTO) Doha Round negotiations. Grassley added that “there's no reason to play games with her nomination . . . Senators have had ample opportunity to question [her] and the administration on China policy, and she and the administration have answered the questions that have been posed to them.” He noted that “delaying her confirmation doesn't add anything.”

On May 22, 2006, the Senate Finance Committee approved Schwab's nomination to be the next USTR by a vote of 18-to-1. Sources had earlier indicated that the Senate was expected to confirm Schwab without floor debate before Congress adjourned for the Memorial Day recess on May 26. Schumer's actions have muddled what was formerly a clear timeframe for Schwab's confirmation. The Senate is scheduled to return to work on June 5, and the Senate will likely take up Schwab's confirmation sometime shortly thereafter. Schumer's move is likely a ploy to refocus attention on his concerns over Chinese currency policy. Schumer and Senator Lindsey Graham (R-SC) introduced legislation (S. 295) “that would assess a 27.5 percent tariff on all Chinese imports” if China does not address its alleged currency manipulation. The vote on the bill has been delayed several times, and Sen. Grassley's introduction of competing legislation (the “United States Trade Enhancement Act of 2006” (S. 2467) meant to strengthen U.S. trade enforcement and increase Congressional involvement in trade enforcement) had neutralized most Congressional support for, and attention to, the Schumer-Graham bill. Schumer's latest actions indicate that he will not stand down on the China issue and will utilize any and all means to express his views on Chinese currency policy and to refocus attention on his legislation.

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## Free Trade Agreements

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### U.S. and Korean Negotiators Complete First Round of FTA Talks

#### Summary

On June 9, 2006, U.S. and Korean negotiators concluded the first formal round of U.S.- Korea (KORUS) Free Trade Agreement (FTA) negotiations in Washington, DC. Trade officials from both sides discussed their respective draft agreements and reportedly agreed on 40 percent of a final agreements' contents, producing a consolidated draft text for all but four sectors. Negotiators also identified difficult issues to address in future rounds including agriculture, sanitary and phytosanitary (SPS) measures, textiles, automobiles, pharmaceuticals and the origin of goods produced in the Kaesong Industrial Complex. Both sides will meet in Seoul, Korea July 10-14 for a second round of talks.

#### Analysis

The United States and Korea on June 9 concluded the first round of FTA negotiations in Washington. The parties divided the negotiations into 17 groups:

- Agriculture;
- Competition policy;
- Customs administration and rules of origin (ROO);
- Dispute settlement and transparency;
- Environmental issues;
- Financial services;
- Government procurement;
- Intellectual property rights (IPR);
- Investment;
- Labor;
- Market access and national treatment of goods;
- SPS issues;
- Services trade;

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- Technical barriers to trade;
- Telecommunications and e-commerce;
- Textiles trade; and
- Trade remedies.

Negotiators also convened two special working groups on automobiles and pharmaceuticals.

During the talks, the U.S. and Korean negotiators discussed draft agreements that the two sides exchanged on May 19. Neither side has publicly released the complete draft texts, but sources indicate that a number of differences between the two versions emerged in the talks' first round. Negotiators reviewed these differences and identified difficult issues and sectors. Both sides concluded a consolidated draft text for 11 of the 15 sectors that they discussed in Washington, but bracketed many of these difficult issues, such that they may be addressed in future rounds.<sup>1</sup> Negotiators failed to approve consolidated texts for agriculture, SPS measures, textiles and trade remedies. Our sources at the Office of the United States Trade Representative (USTR) indicate that automobiles, agriculture, pharmaceuticals, services, textiles and Kaesong Industrial Complex-produced goods are likely to be the negotiations' most contentious issues. Below we highlight the first round developments regarding these issues:

- **Agriculture.** Negotiators did not produce a consolidated draft agriculture chapter and will resume the discussion during the negotiations' second round in July. The United States maintains that the FTA should: (i) include all agricultural products; (ii) reduce tariffs; and (iii) accelerate Korea's tariff rate quota elimination. Korean negotiators insist that the United States allow Korea to implement safeguards for rice and other sensitive agricultural products. USTR has identified agriculture as one of the agreement's most difficult issues.
- **Automobiles.** Although the United States and Korea drafted a consolidated text on autos, a number of outstanding issues remain. The United States requested that Korea eliminate a number of tariff and non-tariff barriers (NTBs), including an eight percent import duty and a tax on engine displacement that USTR claims discriminates against larger foreign autos. U.S. negotiators want Korea to instead base the tax on price. The U.S. side also insisted that Korea demonstrate "measurable and meaningful market access" prior any U.S. commitment to open U.S. markets to Korean imports.

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<sup>1</sup> According to standard protocol in trade agreement negotiations, bracketing indicates that the parties have not reached an agreement on an issue and will revisit it at a later date in an attempt to resolve their differences.

- **Kaesong Industrial Complex.** The two parties did not agree on rules of origin (ROO) for goods produced in the Kaesong Industrial Complex. North and South Korea developed the Kaesong Industrial Complex, which lies in a special administrative region of North Korea and allows South Korean companies to employ North Korean workers in factories within the complex; the complex faces a number of obstacles including U.S. economic sanctions against North Korea prohibiting imports of key technologies and goods, such as computers. Although the United States agreed to postpone this discussion until the July talks, our sources note that the United States is unlikely to include in the agreement duty-free access for Kaesong-made goods .
- **Pharmaceuticals.** U.S. and Korean negotiators held a separate pharmaceuticals working group meeting but failed to agree on a consolidated draft text. The United States has identified Korea's pharmaceutical reimbursement policy, which sets higher reimbursements for generic drugs, as a barrier to U.S. pharmaceutical sales. USTR also opposes a May 3, 2006 Ministry of Health and Welfare announcement that it will implement a "positive list" reimbursement system. The system requires government approval for pharmaceutical and medical equipment reimbursement and U.S. negotiators worry that it could discriminate against foreign competition.
- **Services.** Negotiators agreed on consolidated draft texts for financial services and the services trade.
- **Textiles and Trade Remedies.** Negotiators made little progress on textiles and ended negotiations without a consolidated text. Korea pressed the United States to review its antidumping policy which Korean negotiators claim has denied Korean textile exporters access to the U.S. market. The Koreans also urged the United States to revise its ROO determination policy, which Korean negotiators claim discriminates against imported input-dependant Korean textiles.

### Outlook

During the first round of talks, negotiators resolved many of the agreement's less sensitive issues, thus allowing future rounds to focus on more contentious issues. Although the talks produced consolidated text for 11 negotiating areas, sources indicate that a number of chapters recognized but did not resolve disagreements in difficult areas (leading to significant bracketing in the consolidated text). Agriculture, automobiles, textiles, and ROO will likely remain divisive issues negotiators must address in future rounds. However, U.S. and Korean officials appear to possess the political will to conclude the agreement, and both sides have expressed a strong desire to complete the agreement before the July 2007 expiry of Presidential Trade Promotion Authority (TPA) could affect the FTA's congressional passage and ultimate implementation.

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## U.S. and Malaysia Complete First Round of FTA Negotiations

### Summary

On June 12, 2006, U.S. and Malaysian officials met in Kuala Lumpur, Malaysia for the first official round of bilateral Free Trade Agreement (FTA) negotiations. Officials from the Office of the United States Trade Representative (USTR) discussed several issues with their Malaysian counterparts including financial services liberalization and auto trade. Sources note that Malaysia's reluctance to open its auto and banking sectors, as well as intellectual property (IP) infringement and Malaysian government procurement issues, remain the most contentious issues. Both sides will next meet on July 17 in Washington, D.C. for the negotiations' second round.

### Analysis

On June 12, 2006, USTR officials met with their Malaysian counterparts in Kuala Lumpur, Malaysia for the first round of bilateral FTA negotiations. The officials discussed several issues including financial services liberalization and auto trade. Sources note that Malaysia's reluctance to open its auto and banking sectors, as well as intellectual property (IP) infringement and government procurement issues, remain the most contentious issues. Assistant USTR for Asia Pacific Barbara Weisel and Malaysian International Trade and Industry Ministry Secretary General Mohamad Sidek Hassan led the respective U.S. and Malaysian delegations. Weisel stated that "the discussions were more productive and more constructive than some of us thought they would be, and I would actually give credit to the Malaysians for that, because I think they came extremely well-prepared for this negotiation."

**Background.** On March 8, 2006, USTR Rob Portman announced that the United States will formally pursue an FTA with Malaysia. Malaysia's Minister of Trade Rafidah Aziz and a bipartisan group of Congressional leaders joined Portman in making the announcement. Portman stated that "Malaysia has been at the forefront of the economic dynamism transforming Asia in recent years," and that "Malaysia's rapidly growing economy will help generate meaningful export opportunities for [U.S.] workers, service providers, and farmers." He added that the United States has achieved moderate success in securing increased access to the Malaysian market, but that the United States must still work closely with Malaysian officials on issues such as agriculture. USTR officials and their Malaysian counterparts held an initial January meeting that Assistant USTR for Japan, Korea, and APEC Affairs Wendy Cutler described as "very positive."

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**Congressional Support.** The FTA has already garnered Congressional support. On January 30, 2006, Representatives Pete Sessions (R-TX) and Gregory Meeks (D-NY) – members of the Malaysia Trade, Security, and Economic Cooperation Caucus – circulated to Congress a letter supporting the initiation of formal FTA negotiations with Malaysia. In the letter, Reps. Sessions and Meeks highlighted the active role of large U.S. companies in Malaysia's information technology (IT) sector and opined that the FTA “would create new opportunities in a cross section of American economic sectors from agriculture, financial services, and automobiles.” They added that the FTA “is supported by major American business associations” including the U.S. Chamber of Commerce and the National Association of Manufacturers (NAM). The letter also outlined geopolitical reasons for a U.S.-Malaysia FTA, stating that initiating FTA negotiations with Malaysia would “increase ties to a strategically important geographic region.” The letter added that the FTA would solidify relations with a majority Muslim Democratic nation, which in turn could strengthen Malaysia's role as a critical U.S. counter-terrorism partner and a leading defense cooperation partner for the U.S. military.

**Draft agreement.** Like the U.S.- South Korea (KORUS) FTA negotiations the week of June 5, U.S. and Malaysian officials brought separate draft agreement texts to the first negotiating round but did not begin consolidating them into a single draft. U.S. officials stated that it was never the intention of either side to begin consolidating their respective texts during the first round. Instead, they indicated that both countries will likely begin to consolidate in the next round. U.S. officials also noted that U.S. and Korean officials began to consolidate draft text during the first round of U.S.- Korea (KORUS) FTA negotiations because “the size of Korea's economy and the complexity of [negotiating] issues” would likely extend negotiations beyond the usual timeframe.

**Negotiating Groups.** The parties divided the negotiations into 22 groups:

- Agriculture;
- Auto trade;
- Competition policy;
- Customs administration
- Rules of origin (ROO);
- Dispute settlement;
- Environmental issues;
- Financial services and investment;

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- Government procurement;
- Intellectual property rights (IPR);
- Investment;
- Labor;
- Market access;
- National treatment of goods;
- Pharmaceuticals;
- Sanitary and phytosanitary (SPS) issues;
- Services trade;
- Technical barriers to trade;
- Telecommunications and e-commerce;
- Textiles, footwear, and apparel trade;
- Trade remedies; and
- Transparency.

**Key Issues.** According to U.S. officials, four negotiating areas will be the most contentious in the FTA negotiations with Malaysia: Autos, Banking, IPR enforcement, and Government Procurement:

- **Auto trade.** Malaysia is the only Southeast Asian country that produces its own cars and has imposed high import tariffs on foreign carmakers to protect its national car industry. USTR has outlined these non-tariff barriers (NTBs) in its annual National Trade Estimate (NTE) Report on Foreign Trade Barriers. Sources note that the two sides will continue to focus on auto trade during the next several rounds. AUSTR Weisel indicated that the U.S. delegation in the first negotiating round emphasized its desire to open Malaysia's automotive market, which is currently protected by high tariffs. According to USTR, a recent Malaysian auto policy revision somewhat reduced those tariffs for cars made in the region, but U.S. automakers have said additional reforms are needed.
- **Banking.** According to U.S. officials, Malaysia has tight regulations for foreign banks in Malaysia including the number of branches or automated teller machines (ATMs) that they are allowed to have. Sources note that negotiators did not focus on banking during this initial round but will likely do so in

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the next round. Weisel stated that financial services liberalization is a USTR priority in the talks, and the United States seeks similar provisions that it has included in other FTAs including: (i) greater regulatory transparency for banks, securities firms and insurance companies; (ii) the right to establish new investments in Malaysia; and (iii) the right to acquire existing financial services companies.

- **Intellectual property rights (IPR).** Allegedly rampant software piracy has led USTR to include Malaysia in 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." Sources note that negotiators will focus on IPR issues in the next several rounds, with U.S. officials calling for greater transparency and IPR monitoring.
- **Government procurement.** Malaysian government regulations mandate that companies bidding for government contracts have at least 30 percent Malay equity. These regulations also dictate that 60 percent of government contracts must go to Malay companies. The regulations are part of Malaysia's New Economic Policy (NEP) - an affirmative action policy that favors the majority ethnic Malays (also known as "bumiputras") who the government believes lag behind the ethnic Chinese minority. The United States posits that this government policy discriminates against U.S. companies contracting in Malaysia.

### Outlook

Weisel stated that the first round of negotiations are off to a "good start," and from all accounts, it appears that both the U.S. and Malaysian delegations were prepared for productive round. Like the KORUS negotiations, U.S. and Malaysian trade officials exchanged draft FTA texts and began to clear "low-hanging fruit" (*i.e.*, the easy issues). However, the sides did not begin to consolidate their draft texts into a single agreement text but will likely begin the process during the mid-July round. Auto trade, financial services liberalization, IPR enforcement and government procurement will be the negotiations' primary problem areas and will require more than one round of talks. However, based on the talks' good start, it seems that both sides possess the political will and desire to complete the agreement before Presidential Trade Promotion Authority (TPA) expires in July 2007. On the other hand, should the parties fail to reach early agreement on the contentious issues, particularly autos, Congressional support for the FTA might wane. Should these problems arise, the FTA might encounter delays that threaten its timely completion.

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## U.S. and India Convene U.S.-India Trade Policy Forum Ministerial Meeting

### Summary

On June 22, 2006, United States Trade Representative (USTR) Susan Schwab and Indian Minister of Commerce and Industry Kamal Nath chaired the third round of ministerial talks under the United States-India Trade Policy Forum (TPF) in Washington, DC. During the one-day meeting, the U.S. and Indian trade ministers discussed bilateral economic issues such as: (i) agricultural trade; (ii) investment; (iii) trade in services; and (iv) improvement of intellectual property protection.

The two sides agreed on a number of actions to address these issues and improve bilateral trade and investment relations.

### Analysis

According to a June 22 India-U.S. joint statement, the two sides made progress in the following areas:

- **IPR Action Plan and Technical Assistance:** The United States agreed to provide technical assistance to strengthen India's IPR regime and to promote innovation, creativity and technological advancement. U.S. assistance will include strengthening India's Patent Office and Trademark Registry as well as capacity building for institutions vital to IPR protection. USTR considers Indian IPR violations a serious infringement on U.S. business interests and designated India as a "Priority Watch List" country in its 2006 "Special 301" annual review of IPR protection.
- **Bilateral Infrastructure Investment Program:** In the area of investment, the United States and India agreed to cooperate in identifying bilateral investment opportunities, incentives and challenges.
- **Sanitary and Phytosanitary (SPS) Measures:** The United States agreed to take steps to address its import restrictions on Indian mangoes and India agreed to take steps to address its import restrictions on U.S. almonds, wax covered fruit and wheat. This agreement follows a March 2006 agreement between the U.S. Department of Agriculture (USDA) and the Indian Department of Agriculture and Cooperation to end a 17-year U.S. import ban on Indian mangoes.
- **Legal Services Working Group:** Both parties made progress towards selecting members of a legal services working group that will address market access and other issues. USTR complains that India maintains a number of market access limitations in legal services including prohibition of foreign direct investment (FDI).

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- **Continued Tariff Structure and Emissions Standards Discussions:** Both parties agreed to continue discussions on India's wine and spirits tariff structure and emissions standards for large motorcycles. India currently maintains high tariffs on imported wines and spirits. Separately, USTR claims that India's emissions standards lack transparency and favor domestically manufactured, small-displacement motorcycles.
- **Senior-level Private Sector Addition to TPF:** Both parties agreed to establish under the TPF a private-sector advisory group to provide strategic direction, input and support to the TPF.

Regarding the World Trade Organization (WTO) Doha Round of trade negotiations, USTR Susan Schwab and Indian Commerce Minister Kamal Nath acknowledged that although the United States and India disagreed on "how we get to yes," both countries agreed that the round's successful conclusion by the end of 2006 would serve both countries' interests. Schwab and Nath also reconfirmed each side's commitment to the TPF's goal of doubling bilateral trade flows in three years.

President Bush and Prime Minister Manmohan Singh established the TPF in July 2005 to continue the agenda of U.S.-India Working Group on Trade, which the TPF replaced, and to jointly recommend regulatory framework changes to create closer economic ties. Then-USTR Rob Portman and Indian Minister of Commerce and Industry Kamal Nath co-chaired the Forum's inaugural meeting in New Delhi, India in November 2005. During the meeting the two sides addressed tariff and non-tariff barriers, agriculture, investment, services, IPR and the Doha Round, and also agreed to form focus groups on agriculture, tariff/non-tariff barriers/services, investment and innovation and creativity. Indian Commerce Secretary S.N. Menon and Deputy USTR Karan Bhatia co-chaired a second meeting in Washington in February 2005.

### **Outlook**

Many of the TPF outcomes echo themes highlighted by President Bush and Indian Prime Minister Manmohan Singh during Bush's March 2006 visit to India. In a joint statement released at the time, the United States and India agreed to cooperate to ensure a successful Doha Round conclusion by the end of 2006, to cooperate on IPR protection and to promote trade and investment relations.

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## Senate Finance Committee Holds Hearing on U.S.-Peru Trade Promotion Agreement

### Summary

On June 29, 2006, the Senate Finance Committee held a hearing on the U.S.-Peru Trade Promotion Agreement (PTPA). The hearing included **on-the-record** oral testimony from government and business representatives. We review below this testimony and the discussion between the Committee and witnesses.

The full text of the witnesses' statements is available on the Committee website at: <http://finance.senate.gov/sitepages/hearing062906a.htm>.

### Analysis

On June 29, 2006, the Senate Finance Committee held a hearing on the PTPA. The hearing included **on-the-record** oral testimony from government and business representatives.

- **Senator Charles Grassley (R-IA), Chairman of the Senate Finance Committee** stated that the PTPA “provides significant benefits for U.S. farmers, manufacturers, and service providers,” and that the agreement “will level the playing field for U.S. exporters.” According to Grassley, the PTPA will also remove Peru's high tariffs on U.S. imports and eliminate an “unbalanced trading relationship largely the result of unilateral trade benefits provided by Congress to Peru through the Andean Trade Preference Act (ATPA) of 1991, which was renewed and expanded in 2002.” Grassley also cited a U.S. International Trade Commission (ITC) report finding that under the agreement, U.S. exports to Peru will increase by 25 percent, and the U.S. gross domestic product will grow by an additional \$2.1 billion. He stated that the “U.S.-Peru Trade Promotion Agreement will be particularly good for U.S. agriculture,” and adding that the PTPA will also boost U.S. manufacturing exports to Peru. Grassley noted that “Latin America is currently at a crossroads [with] some countries in the region, such as Venezuela, Bolivia, and Ecuador, seeking to further centralize their economies and, at the same time, to distance themselves from the United States.” He continued that countries like Peru “are doing just the opposite” and are “committed to market liberalization and to strengthening their economic ties with the United States.” He declared that by implementing this agreement, “the United States Congress will show that it's committed to helping build economic and political stability in Peru and, by extension, in the rest of Latin America.”

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- **Senator Max Baucus (D-MT), Ranking Member of the Senate Finance Committee** stated that the PTPA “appears to be a big win for Montana and U.S. farmers and ranchers” because “approximately two-thirds of current U.S. agriculture exports – including wheat and high-quality beef – will receive immediate duty-free access to Peru’s market.” He stated that “the agreement also has potential in other areas,” noting that U.S. exports of industrial goods, such as medical and scientific equipment, will receive immediate duty-free access, and that “U.S. providers of distribution, securities, express delivery, and computer services will have better-than- World Trade Organization (WTO) access to Peru’s market.” Although Baucus stated that “the agreement holds promise,” he opined that the United States is “not yet ready to realize this promise.” Baucus listed a series of concerns, “both substantive and political,” that impede the agreement’s conclusion, including: (i) Peru’s “backtracking” on opening its market to U.S. beef; (ii) Peru’s “attempts to criminalize commercial disputes”; and (iii) “serious” labor issues. Baucus stated that until the United States and Peru have addressed these concerns, he “cannot imagine how Congressional consideration of this agreement can proceed smoothly.” Baucus also stated that the PTPA “comes to Congress in a very difficult climate on international trade [when] trust in the administration’s trade agenda is bottoming out,” adding that “some staunchly pro-trade Members of this Committee are starting to conclude that the current model of Trade Promotion Authority (TPA) does not allow them meaningful input into shaping trade policy.”
- **Everett Eissenstat, Assistant United States Trade Representative (AUSTR) for the Americas,** stated that the PTPA “marks the beginning of a new chapter in our commercial partnership with Peru,” and that the agreement “sets out fair and reciprocal trade rules which will promote economic growth and prosperity in both countries.” According to Eissenstat, the PTPA eliminates unfair barriers to U.S. exporters and “opens a market of 28 million consumers to U.S. manufacturers, farmers, ranchers, and service providers.” He added that in exchange for Peru’s market opening, the PTPA “makes permanent the trade benefits Congress first authorized for Peru in 1991 under the Andean Trade Preference Act,” which in turn helps “create favorable conditions and incentives in creating sustained real growth characterized by more jobs and investment in Peru.” He stated that the political and economic benefits of the PTPA for the United States are “significant” and that the agreement “makes trade between us a two-way street.”

Eisenstatt noted that “on day one of the Agreement, 80 percent of U.S. industrial products will be able to enter Peru duty-free [and] within five years, an additional six percent of [U.S.] industrial products will become duty-free and another four percent within seven while duties on the remaining 10 percent will be phased-out over ten years.” On agriculture, he stated that the agreement “lowers tariffs and assures that

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[U.S.] exporters will not face higher tariffs in the future”: almost 90 percent of [U.S.] current agricultural trade with Peru will enter the Peruvian market duty-free on day one of the agreement, and Peru will immediately eliminate its price band system on trade with the United States. According to Eissenstat, tariffs on other agriculture products will be eliminated gradually: most within five to fifteen years, and all within 17 years. He also noted that the agreement eliminates non-tariff barriers (NTBs) that “currently limit U.S. products and services from competing in Peru’s market,” and that the PTPA “will also provide important new opportunities for U.S. companies in Peru across a wide range of services sectors: telecommunications, banking, insurance, audio-visual services, transportation, engineering, computer and related services and express delivery, providing “comprehensive and strong protection for U.S. intellectual property interests, including copyright protection for the digital age, as well as patents, trademarks and proprietary data protections.”

On labor, Eissenstat stated that Peru has undertaken significant labor reforms in the past several years and is committed to undertaking additional reforms in an effort to address U.S. concerns. According to Eissenstat, “Peru has ratified all eight core conventions of the International Labor Organization (ILO) and Peru’s Constitution guarantees freedom of association, collective bargaining, and the right to strike.” He added that the PTPA “includes a variety of tools that will help ensure that workers in Peru benefit from these reforms,” and that the agreement will require Peru to effectively enforce its labor laws. Should Peru fail to do conduct such enforcement, “the United States can invoke the Agreement’s consultation and dispute settlement procedures, which could ultimately lead to the imposition of an annual monetary assessment of up to \$15 million.” Eissenstat concluded that the PTPA also “calls for Peru to provide fair, equitable and transparent domestic legal procedures through which persons can seek enforcement of Peru’s labor laws.”

- **Joy Philippi, President of the National Pork Producers Council (NPPC)** stated that the PTPA “when implemented, will create important new opportunities for U.S. pork producers” through the establishment of immediate tariff reductions on all pork products. She noted that the Peruvian government “has confirmed that it shall recognize the meat inspection system of the United States as equivalent to its own meat inspection system” and opined that this resolves many sanitary and phytosanitary (SPS) issues of concern. Philippi stated that “as the benefits from the Uruguay Round and the North American Free Trade Agreement (NAFTA) begin to diminish due to the fact that benefits from these agreements are now fully phased-in, the creation of new export opportunities becomes increasingly important,” adding that the PTPA is “an important part of this process and will bring real benefits to U.S. pork producers.”

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- **Brian O'Neill, Vice Managing Director & Vice Chairman, Latin America, Investment Banking, J.P. Morgan** stated that PTPA “sets the stage for an attractive regional market and should enhance integration and cooperation among the countries of the Andes – a very positive contributing factor for sustainable growth.” He opined that “Peru has just completed a difficult election process and it is therefore important for the United States to show it’s support to a country that has made major efforts to lift up it’s economy in a market friendly and democratic way, while fighting poverty in the last 5 years.” He also stated that the agreement “enhances the U.S. relationship with a country that is a much-needed ally in a strategic region during a politically sensitive time,” and that “by having FTAs with most of the countries along the Pacific coast of Latin America, including the agreements with Colombia and Peru, the United States is creating a strategic area of stability in the west coast of Latin America, thereby enhancing our national security interest.” O’Neill stated that the PTPA “is a very effective tool as a countervailing force to competing world views in the region.”
- **Richard Trumka, Secretary-Treasurer of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)** opined that the Peru FTA “provides precisely the wrong answers to the challenges faced in Peru and the United States,” and that the agreement is “based on a failed model that neither addresses the problems confronted by workers in Peru, nor contributes to the creation of good jobs and decent wages” in the United States. According to Trumka, contentious labor issues remain in Peru, including: (i) workers’ rights provisions that are “entirely inadequate to ensure that workers’ fundamental human rights are respected”; (ii) a dispute settlement mechanism for workers’ rights and environmental protections that is “far weaker than that available for commercial provisions”; (iii) “flawed provisions on services, investment, government procurement, and intellectual property rights will undermine the ability of both governments to protect public health, strong communities, and the environment”; and (iv) labor laws “that still do not comply with ILO core labor standards” and are not respected in practice.

### Outlook

The Finance Committee hearing occurred one day after the Peruvian Congress approved the PTPA. This timing is not a coincidence, as the U.S. Congress has delayed considering the PTPA over concerns that the Peruvian Congress might not approve the agreement.<sup>2</sup> Peruvian President Toledo's administration is

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<sup>2</sup> On June 28, 2006, the Peruvian Congress approved the U.S.-Peru Free Trade Agreement by a vote of 79 to 14, with six abstentions. The Peruvian Congress rushed to discuss the U.S.-Peru FTA and a compensation fund for corn, wheat, and cotton growers before the new Congress takes office on July 28.

now pushing for Congress to approve the agreement as quickly as possible: Toledo has already sent Cabinet Chief Pedro Pablo Kuczynski to Washington to begin lobbying for Congressional consideration of the agreement, and sources note that Toledo himself may visit Washington to discuss the Bush Administration's timeframe for submitting formal implementing legislation to Congress. Despite Toledo's efforts, the timing of congressional consideration of the U.S.- Peru FTA remains unclear. Votes on the U.S.-Oman FTA and possibly Permanent Normal Trade Relations (PNTR) for Vietnam are in front of the Peru vote on the Congressional docket, thus leading some in Congress, including House Majority Whip Roy Blunt (R-MO) and House Majority Leader John Boehner (R-OH), to opine that one or more of these votes could be delayed until after the November elections. Should Congress be unable to consider the Peru FTA before the Fall mid-term elections, Peruvian officials will become concerned, as Peru will lose the duty-free benefits of the Andean Trade Promotion and Drug Eradication Act (ATPDEA), which expires on December 31, 2006. Congressional consideration before 2007, however, is still quite likely.

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## ***Free Trade Agreement Highlights***

### **Senate Passes U.S.-Oman FTA, 60 to 34**

On June 29, 2006, the U.S. Senate voted 60 to 34 to approve legislation implementing the U.S.-Oman Free Trade Agreement (FTA) (S. 3569). On the same day, the House of Representatives Ways and Means Committee approved 23 to 15 its markup of the House version of the bill (H.R. 5684). House Majority Whip Roy Blount has indicated that a vote on the House version will occur sometime in late July, but an exact day remains uncertain. Under Trade Promotion Authority's (TPA) rules for Congressional passage of an FTA, if the Senate votes first or concurrently with the House on FTA implementing legislation, the House must vote (with a maximum 20 hours of floor debate) on its version of the legislation within 15 days of the House Ways & Means Committee's approval and reporting of the legislation. President Bush sent the bill to Capitol Hill on June 26.

Under the Oman FTA, 100 percent of tariffs for industrial and consumer goods will immediately go to zero. Oman will grant immediate duty-free access to 87 percent of U.S. agricultural exports and will phase-out remaining tariffs over the next ten years. The United States will grant immediate duty-free access to 100 percent of Oman's agricultural exports. The United States and Oman will grant reciprocal market access for textile and apparel products, eliminating the majority of tariffs immediately and eliminating remaining tariffs within five years. Qualifying textiles and apparel must contain either U.S. or Omani yarn, but the agreement provides temporary duty-free treatment for textiles and apparel that do not meet the rules of origin requirements in the short-run. The FTA's terms also require Oman to provide: i) a secure, predictable legal framework for U.S. investors in Oman; ii) effective enforcement of labor and environmental laws; and iii) intellectual property rights (IPR) protections.

The Oman FTA's implementing legislation was expected to pass in the Senate, despite Senate Democrats' recent disapproval over President Bush's exclusion of an amendment denying preferential treatment to any Omani goods produced by forced labor. The Senate Finance Committee on May 18 unanimously approved a "mock markup" of the FTA's implementing legislation that included the slave labor amendment. However, because TPA mandates that mock markup legislation is only advisory in nature, the Bush Administration omitted the slave labor provision from the FTA's formal implementing legislation. Despite open Democratic censure of the Oman FTA prior to the Senate vote, many of these critics, including Sen. John Kerry (D-MA), one of the sponsors of the labor amendment, and Finance Committee Ranking Member Sen. Max Baucus (MT) voted in favor of the FTA.

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On June 29, the Senate Finance Committee approved the legislation by a 10 to 3 margin. Assuming House passage, President Bush will likely sign the FTA into law shortly thereafter, as the agreement will further the Administration's goal to create a U.S.-Middle East Free Trade Area (USMEFTA) by 2013. Passage of the Oman FTA legislation will also clear the way for Congressional consideration of other pending trade matters including formal implementing legislation for a U.S.-Peru FTA and a bill (S.3495) that would grant Permanent Normal Trade Relations (PTNR) status for Vietnam, as part of Vietnam's accession to the World Trade Organization (WTO).

### **House Ways and Means Committee Schedules Peru FTA Hearing, Peruvian Congress Approves Agreement**

The House Ways and Means Committee will hold a hearing on the U.S.- Peru Free Trade Agreement (FTA) on July 12, 2006. Assistant United States Trade Representative (USTR) for the Americas Everett Eissenstat will testify at the hearing. The Senate Finance Committee held its hearing on the Peru agreement on June 29. The United States and Peru completed FTA negotiations on December 7, 2005 and on April 12, 2006, then-USTR Rob Portman and Peruvian Minister of Foreign Trade and Tourism Alfredo Ferrero Diez Canseco signed the agreement. Upon implementation of the agreement, 80 percent of consumer and industrial products and more than two-thirds of current U.S. farm exports to Peru will receive immediate duty-free access.

The hearing announcement comes on the heels of the Peruvian Congress' June 28 approval of the U.S.- Peru FTA on June 28. The measure passed by a vote of 79 to 14, with six abstentions. Peruvian President Toledo's administration is now pushing hard for the U.S. Congress to approve the agreement as quickly as possible; Toledo has already sent Cabinet Chief Pedro Pablo Kuczynski to Washington to begin lobbying for passage. Sources note that Toledo himself may make a visit to Washington to discuss when the Bush Administration plans to send the FTA's formal implementing legislation to Congress for a final up-or-down vote. However, USTR spokesman Steve Norton has stated that the Administration "will have to work with the congressional leadership to determine the best time to send implementing legislation to Congress on the Peru agreement."

Despite Toledo's efforts, the timing of congressional consideration of the U.S.- Peru FTA remains unclear. Votes on the U.S.-Oman FTA and possibly Permanent Normal Trade Relations (PNTR) for Vietnam are in front of the Peru vote on the Congressional docket, thus leading some in Congress, including House Majority Whip Roy Blunt (R-MO) and House Majority Leader John Boehner (R-OH), to opine that one or more of these votes could be delayed until after the November elections. Should Congress be unable to

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consider the Peru FTA before the Fall mid-term elections, Peruvian officials will be very concerned, as Peru will lose the duty-free benefits of the Andean Trade Promotion and Drug Eradication Act (ATPDEA), which expires on December 31, 2006.

### **Senate Finance Committee Approves Oman FTA Amid Democrats' Anger On Slave Labor Amendment**

On June 28, 2006, the Senate Finance Committee approved by a 10-3 margin legislation (S. 3569) to implement the U.S.-Oman Free Trade Agreement (FTA). The approval came despite many Committee Democrats' opposition because the Bush Administration omitted a provision to deny trade benefits to any imports made with forced labor. The full Senate will consider the legislation on June 29; the House Ways and Means Committee is expected to mark up its version of the Oman FTA bill (H.R. 5684) on the same day. House consideration of the legislation is expected in July.

The forced labor provision would have denied trade preferences to any Omani products made with slave labor and was offered by Senate Democrats as an amendment to the FTA's formal implementing legislation. Senators Kent Conrad (D-ND), Jeff Bingaman (D-NM), and John Kerry (D-MA) sponsored the amendment. On May 18, the Finance Committee unanimously approved a draft version of the legislation, with the slave labor amendment, during its "mock markup" of Oman FTA legislation. Under Trade Promotion Authority (TPA), however, amendments approved in mock markups are only advisory in nature. The Administration thus forwarded the FTA's formal implementing legislation to Capitol Hill on June 26 without the forced labor amendment, arguing that the amendment is unnecessary because U.S. law already prohibits the importation of goods made by forced labor. James Mendenhall, General Counsel at the Office of the United States Trade Representative (USTR) added that the amendment may also be inconsistent with the requirements of TPA, which allow Congress only to suggest measures that are "necessary and appropriate" to implement trade agreements. Under TPA, the bill will now be subject to an up or down vote, without amendment.

Senator Max Baucus (D-MT), ranking Democrat on the Senate Finance Committee, noted that the Administration's decision to send legislation to the committee without language on forced labor "seriously violates the spirit of the President's Trade Promotion Authority." He added that "the Administration has clearly chosen not to listen [to Congress] on trade agreements," and that he hopes "that they are listening now because what they will hear is another nail driven into the coffin of TPA." TPA is set to expire in July 2007, unless Congress renews or extends the measure. Senator Conrad opined that the Administration's action "makes a mockery of the TPA process," calling it a "sham [and] a farce." Senate Minority Leader

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Harry Reid (D-NV) also stated that “it is deeply disappointing to me that President Bush has decided to allow goods with slave labor, forced labor, or labor from human trafficking to benefit from U.S. free trade agreements” and added that “it is an affront to the Senate Finance Committee and to the entire Congress.”

The FTA is another move forward toward the President's goal of completing a U.S.- Middle East Free Trade Area (USMEFTA) by 2013. Through USMEFTA, “the United States seeks to expand trade with and investment in Middle East countries to further their domestic reforms and the rule of law, protect intellectual property, and create a foundation for economic growth and prosperity.” Since President Bush announced the USMEFTA Initiative in May 2003 the United States has signed FTAs with Israel, Jordan, Bahrain and Morocco, and is in formal FTA negotiations with the United Arab Emirates (UAE). Unlike those agreements, however, labor concerns may cause the Oman FTA to encounter a bit more congressional opposition during the upcoming House and Senate floor votes. The Administration's decision not to include the amendment on slave labor has ruffled Democratic feathers, and they will likely remain vocal on the issue throughout the voting process. However, it is unlikely that the amendment's omission will affect the outcome of the House and Senate votes: the measure is expected to pass both Chambers by reasonable margins. Indeed, Senate Democrats may have offered the amendment due to election-year politics rather than a real desire for the Administration to include it in the final implementing legislation. The amendment appealed to U.S. organized labor – a traditional Democratic supporter – and the Administration's refusal to include it provided Senate Democrats with a reason to vote against the overall FTA, which the AFL-CIO and other labor groups oppose.

### **Sen. Baucus Warns of Difficult Issues in KORUS FTA**

On June 15, Senate Finance Committee Ranking Democrat Sen. Max Baucus (D-MT) commended U.S. and Korean negotiators' efforts during the first round U.S.-Korea (KORUS) Free Trade Agreement (FTA) negotiations but warned that “the toughest issues are still before us,” and that problems such as beef, trade remedies, automobiles, pharmaceuticals and Kaesong Industrial Complex-manufactured goods threaten the agreement's viability. During his address to the Korea Economic Institute on the KORUS FTA, Baucus also described Korea's continued ban on U.S. beef as “unacceptable,” vowing not to support a final agreement that fails to open fully the Korean market to U.S. beef. The Korean government in early January 2006 partially lifted its December 2003 ban on U.S. beef imports but continues to restrict U.S. bone-in-beef and offal imports.

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On trade remedies, Baucus stated that Congress will retain its authority over U.S. trade laws, and he assured the audience that Congress “will tolerate no deviation” from the Trade Act of 2002’s mandate that U.S. trade agreements “preserve the ability of the United States to enforce rigorously its” anti-dumping (AD), countervailing duty (CVD) and safeguard laws. Korean negotiators argue that U.S. trade remedies unfairly harm Korean industry, and that the United States must revise these laws to ensure equitable trade gains for Korean firms.

On automobile trade, Baucus noted that many in Congress would base their approval of the FTA on whether the agreement increases U.S. automobile market access beyond “an unnatural 2.7 percent of the market.” Baucus also stressed U.S. industry concerns over a lack of transparency and accountability in the Korean pharmaceuticals market and over Korean government policies that allegedly stifle innovation. He characterized the Korean Ministry of Health and Welfare’s (MHW) May announcement to revise its pharmaceutical reimbursement pricing policy as a “disquieting and unwelcome signal.” Finally, Baucus warned that Korea’s insistence that the United States include in the FTA goods produced in the Kaesong Industrial Complex in North Korea “alone...has the potential to sink” the agreement. Korea maintains that because South Korean firms manufacture the goods, the United States should consider them to be of South Korean origin. For geopolitical reasons, U.S. negotiators oppose the inclusion of Kaesong products, and Chief U.S. negotiator for the FTA Wendy Cutler has stated that the agreement “should cover the Republic of Korea and the United States.”

Baucus’ statements provide an excellent roadmap of the most contentious issues in the KORUS FTA. The parties in the first round of talks were able to complete negotiations on most of the easy issues, leaving the topics that Baucus highlighted – autos, pharmaceuticals, agricultural market access, trade remedies and the Kaesong Industrial complex – for future negotiating rounds. U.S. and Korean negotiators will meet in Seoul, Korea from July 10-14 for a second round of negotiations. It is likely that the parties will at that time begin to address the more contentious issues in the hope that they can reach a final agreement before early 2007 – when the July 2007 expiration of Presidential Trade Promotion Authority could impact the FTA’s congressional passage and subsequent entry into force.

### **U.S., Colombian Presidents Meet to Discuss Outstanding Issues in U.S.- Colombia FTA**

On June 14, 2006, President Bush and Colombian President Alvaro Uribe met in Washington, D.C. to discuss outstanding details related to the completed U.S.-Colombia Free Trade Agreement (FTA). Sources indicate that these issues deal primarily with agreed-upon translations of certain agreement

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sections. President Bush noted that both sides “still [have] some details to work out but [have] committed to working out those details and try to get this done as quickly as we can.” President Bush added that he will “submit the agreement to Congress once it gets done, and I would hope members of both political parties understand the importance of a free trade agreement with this vital ally of ours.”

According to the Office of the United States Trade Representative (USTR), the two sides had a good exchange on the sections of concern, including agriculture and sanitary and phytosanitary standards (SPS), and they identified next steps to secure the agreement’s entry into force. President Uribe also raised Andean countries’ concerns regarding the end-2007 expiration of the Andean Trade Preference Act (ATPA).

On February 27, 2006, the United States and Colombia completed FTA negotiations with a final draft agreement. The Colombian agreement was part of the U.S.-Andean FTA, which included Peru and Ecuador. The U.S.-Andean talks stalled in late 2005 over intellectual property and agriculture issues, and the parties at that time agreed to divide the regional FTA into three separate bilateral agreements. The United States and Peru subsequently completed a bilateral FTA, and President Bush formally notified Congress of the United States’ intent to enter into the agreement. The Ecuador agreement has proven more problematic. Upon rectifying the Colombian FTA’s outstanding details, President Bush will submit the agreement to Congress for hearing and comment. He will then submit the FTA’s formal implementing legislation for a House and Senate vote. However, a congressional vote on the Colombian FTA will likely have to wait until Congress votes on formal implementing legislation for the previously completed U.S.-Oman and U.S.-Peru FTA. Under such a timeline, Congress will likely consider the Colombia FTA’s implementing legislation after the summer recess but before the end of the 2006. USTR, however, continues to advocate congressional consideration of the Peru and Colombia agreements together.

### **U.S. and Rwanda Sign TIFA**

On June 7, 2006, the United States and Rwanda signed a Trade and Investment Framework Agreement (TIFA) meant to improve trade and investment ties between the two economies. Deputy United States Trade Representative (USTR) Karan Bhatia and Rwandan Minister of Commerce, Industry, Investment Promotion, Tourism, and Cooperatives Protais Mitali signed the TIFA on the final day of the African Growth and Opportunity Act (AGOA) Forum. According to the Office of the USTR, the TIFA “will create and provide a formal consultative mechanism to address bilateral trade issues and will help enhance trade and investment relations between the United States and Rwanda and may lead to sector specific and other trade-enhancing agreements.”

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Under the TIFA, both countries will create a U.S.-Rwandan Council on Trade and Investment that will address trade and investment issues, including trade capacity building, intellectual property rights (IPR), labor, investment and environmental issues. The council will also “establish an ongoing dialogue that will help increase commercial and investment opportunities by identifying and working to remove impediments to trade and investment flows between the United States and Rwanda.” According to USTR, Rwandan imports into the United States totaled \$6.3 million in 2005, up 17 percent from 2004, and consisted mainly of coffee and tungsten ores. U.S. exports to Rwanda totaled \$10.2 million in 2005.

The U.S.-Rwanda TIFA is indicative of USTR’s strategy in sub-Saharan Africa. On June 5, Bhatia stated that the United States plans to explore new Bilateral Investment Treaties (BITs) and TIFAs with African countries, but that the United States is not yet ready to initiate formal Free Trade Agreement (FTA) negotiations with these countries. U.S. BITs and TIFAs typically indicate that the United States is considering future FTAs with its BIT and TIFA partners, but as Bhatia noted, the United States will not likely initiate formal bilateral or regional FTA negotiations in the near future. The United States already has TIFAs with several other trading partners in sub-Saharan Africa, including Ghana, Mozambique, Nigeria, South Africa, the Common Market for Eastern and Southern Africa (COMESA), and the West African Economic and Monetary Union (WAEMU/UEMOA).

### **Deputy USTR Bhatia: U.S. Ready to Explore BITs, TIFAs with African Nations, But Too Soon for FTAs**

Deputy United States Trade Representative (USTR) Karan Bhatia stated that the United States plans to explore new Bilateral Investment Treaties (BITs) and Trade and Investment Framework Agreements (TIFAs) with African countries, but that the United States is not yet ready to initiate formal Free Trade Agreement (FTA) negotiations with these countries. Bhatia made his remarks at the 2006 African Growth and Opportunity Act (AGOA) Private Sector Forum, held on June 5, where he noted that the United States will likely make announcements about new BITs and TIFAs “very soon.” He also noted that USTR is exploring “new mechanisms that would allow [the United States] to progressively build new trade-related commitments, short of a free trade agreement, with selected African trading partners.”

At the forum, Bhatia called on African governments to improve their business environments and to encourage trade-capacity building. He also opined that the U.S. market access that AGOA provides African nations “is not enough by itself to boost trade,” and instead that “the objective [of AGOA] is ultimately to transition from relationships based on one-way preferences to broader partnerships involving two-way commitments.” Bhatia continued that “[U.S.] preference programs such as AGOA are and will

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continue to be important tools for giving African countries a special advantage; however, the value of these preferences is steadily declining as a result of free trade agreements, autonomous liberalization, a prospective Doha Agreement, and changes such as the end of global apparel quotas.” He stated that to “preserve and build on the momentum created by AGOA, [the United States] must find other ways to strengthen and deepen [its] trade and investment relations with African countries.”

Bhatia also called on African nations to “continue to work to conclude a new global trade agreement” under the World Trade Organization’s (WTO) Doha Round, stating that “the greatest single potential welfare-enhancing opportunity that the United States, Africa, and the rest of the world have is to successfully conclude the WTO Doha negotiations.” Bhatia added that the United States “would like to see African Members of the WTO speak out more clearly and forcefully in favor of an ambitious, market-opening outcome.”

President Clinton signed the AGOA into law on May 18, 2000 as Title 1 of “The Trade and Development Act of 2000.” The Act offers incentives and benefits to African countries that pursue a market-based economy and improve the rule of law, free trade, poverty-reducing economic policies and labor protections. The President, through close consultation with the Office of the USTR, makes an annual determination of AGOA beneficiary countries. USTR’s 2006 report on AGOA said that 37 of the 48 sub-Saharan African countries are currently eligible for benefits under AGOA. AGOA provides the United States with a conduit to foster economic ties with African nations. According to USTR, U.S. imports from sub-Saharan Africa have more than doubled since AGOA took effect and U.S. exports to sub-Saharan Africa have also doubled in the same timeframe. Bhatia’s announcement that the United States will explore new BITs and TIFAs in Africa indicates that the United States is considering future African FTAs. As Bhatia noted, however, the United States is not yet ready to pursue a more formal FTA route with these African nations and will not likely initiate formal bilateral or regional FTA negotiations in the near future. Bhatia’s requests that African nations increase their involvement in the Doha Round closely parallel his June 1 comments at the APEC Trade Ministers meeting in Vietnam. There he pointed out the benefits of trade liberalization to the Asian economies and asked that they help break the deadlocked WTO negotiations. This series of public statements on Doha may reflect a newfound strategy by the United States to press publicly for the assistance of typically “low-profile” WTO Members to break the stalled WTO negotiations. Considering that the negotiations are perilously close to failure, it may also represent the United States’ last-ditch efforts to save the Round by soliciting support from any and all WTO Members, regardless of their interests or traditional level of involvement in multilateral trade negotiations.

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## **U.S. and South Korea Hold First Round of FTA Talks, Attempt to Resolve Easy Issues First**

On June 5, 2006, the United States and South Korea began the first round of Free Trade Agreement (FTA) negotiations in Washington, DC. Sources indicate that the parties would like to complete the agreement by the end of 2006, but that agriculture and automotive issues will be contentious and could delay a year-end deadline. Wendy Cutler, Assistant United States Trade Representative (AUSTR) for Japan and Korea stated that both sides have exchanged draft negotiating texts, and that they "still have a lot of work ahead...." She noted that both delegations will meet through June 10 in order to "clear out the low-hanging fruit, the easier issues" during the negotiations' first round so that they can focus on contentious issues in subsequent rounds. The next round of negotiations will occur in Seoul, Korea during July 10-14.

Cutler "remains optimistic about [both sides'] ability to conclude a high-quality, comprehensive agreement" and noted that "the political will is clearly there on both sides, and there's bipartisan support in both countries for the FTA." She stated that the United States and South Korea have established working groups on pharmaceutical and automotive issues. According to Cutler, the U.S. automotive group seeks the reduction of non-tariff barriers to trade (NTBs), as well as the reduction or elimination of Korea's eight percent tariff on automobile imports and a Korean engine displacement tax that U.S. officials claims discriminates against foreign-made cars. Cutler also announced the creation of seventeen negotiating groups that will focus on, among other things, dispute settlement and transparency, market access and national treatment of goods, agriculture, financial services and technical barriers to trade, and trade remedies.

The United States and South Korea agreed to enter formal bilateral FTA negotiations on February 2nd. Although both countries are enthusiastic about the agreement, negotiations will be "drawn out" and difficult because of the Korea's complex regulatory system and economy. For example, the U.S. auto industry alleges that Korean environmental regulations prevent U.S., European and Japanese automakers from selling their automobiles to the Korean market. Auto imports make up only two percent of the Korean auto market. Also, the Korean government's designation of agricultural products (particularly rice), electronics, and chemicals as "sensitive products," will be a likely point of contention. Sources further indicate that Korean negotiators will likely push for a bilateral dispute settlement mechanism to avoid subjecting Korean imports to U.S. trade remedies laws. U.S. trade remedy laws have never been considered in a U.S. bilateral trade agreement and are quite sacred among most in the U.S. Congress. Tampering with these laws in any way will likely cause a stir on Capitol Hill. These and

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other contentious issues will make the FTA's completion before the end of 2006 or the mid-2007 expiry of Presidential Trade Promotion Authority (TPA) a difficult proposition. However, as AUSTR Cutler noted, the political will to complete negotiations does exist and might prove enough for a completed FTA. As USTR has noted several times, an ambitious U.S.-Korea FTA would be the most economically significant trade agreement for the United States since the North American Free Trade Agreement (NAFTA). Moreover, should the World Trade Organization's (WTO) stalled Doha Round of multilateral trade negotiations fail, both the United States and Korea will be able to commit additional resources to completing the agreement before TPA expiry becomes an issue.

### **House Democrats Urge Comprehensive South Korea FTA; Senators Demand Removal of South Korean U.S. Beef Ban**

In a May 26th letter to President Bush, House Democrats urged the Administration to take a "new approach" in U.S.-South Korea Free Trade Agreement (FTA) negotiations, scheduled to begin the week of June 5. House Minority Leader Nancy Pelosi (D- CA), Minority Whip Steny Hoyer (D- MD), and Rep. Charles Rangel (D- NY), ranking member of the House Ways and Means Committee, expressed support for a "comprehensive, high-standards" FTA with South Korea with special emphasis on the areas of automotive trade, services, agriculture trade and labor laws. The letter states that the Bush Administration must ensure that the agreement addresses market access barriers maintained by South Korea.

On automotive trade, the letter states that the FTA should "require that Korea provide measurable and meaningful market access for the U.S. automotive sector before any additional access to the U.S. auto market is triggered." This stance echoes the testimony that the Automotive Trade Policy Council presented to the United States Trade Representative in the agency's March 14 hearing on the FTA. The letter also states that the United States should seek the removal of non-tariff barriers that restrict market access in Korea for U.S. banks, insurance companies, pharmaceutical firms, software companies and telecommunications providers. According to the House Democrats, Korean "regulations that are discriminatory, opaque, non-transparent, unpredictable and/or unduly burdensome" frequently limit U.S. access to these markets. On agriculture, the letter states that the FTA should seek the reduction or elimination of Korean tariffs. The Democrats also called for labor reforms as part of the agreement that would require both countries to adopt and enforce the five core International Labor Organization (ILO) labor rights standards.

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Separately, Senator Jim Talent (R- MO) and a bipartisan coalition of thirty-one Senators signed a May 24 letter to South Korea's ambassador to the United States, Lee Tae-sik, demanding that Korea open its market to U.S. beef. Korea banned U.S. beef imports in 2003 following the discovery of a single case of bovine spongiform encephalopathy (BSE), also known as "mad cow disease." The Senators in the letter state their belief that the necessary Senate support for a Korea FTA would not exist unless the agreement includes access for all U.S. beef and beef products, including bone-in and offals.

With the first round of FTA negotiations set for the week of June 5, Congressional interest in the agreement has grown. Negotiations with South Korea will be contentious, especially in the areas of automotive and agricultural trade. The Congressional letters indicate that Congress will closely monitor the negotiations to ensure that the United States is not "giving away too much" in achieving an agreement with South Korea. Nevertheless, the economic significance of a U.S.-South Korea FTA will likely push the agreement forward at a rapid pace, despite Congressional demands.

### U.S. and India Meet Under U.S.- India Trade Policy Forum, Discuss Investment Limits and Doha Round

On May 30, 2006, U.S. and Indian officials met in New Delhi for the fourth meeting of the U.S.-India Trade Policy Forum. Deputy United States Trade Representative (USTR) Karan Bhatia led the U.S. delegation and suggested after the meeting that India should ease investment limits by foreign firms, especially in financial services, and remove trade barriers to increase bilateral trade with the United States. Indian Commerce Secretary S.N. Menon joined Bhatia at the meeting which focused on tariff and non-tariff barriers, agriculture, investment, services and intellectual property rights.

Bhatia stated that "India should pay special attention to increasing investment opportunities by foreign firms in key financial services such as insurance" and noted that although investment flows between the two countries are "relatively small numbers," investment is growing. Sources note, however, that India and the United States did not resolve their differences regarding the World Trade Organization's (WTO) Doha Round of multilateral trade negotiations. According to these sources, Bhatia "indirectly linked" progress in the Doha Round with U.S. trade benefits, specifically India's benefits under the Generalized System of Preferences (GSP). India's status in the GSP program is up for review in December 2006. Sources also note that the United States seeks "less insistence by India and Brazil that the United States offer sharper cuts in agricultural subsidies."

On November 12, 2005, the United States and India launched the India-United States Trade Policy Forum. USTR Rob Portman and Indian Minister of Commerce and Industry Kamal Nath described the forum as a "hub" around which the two countries can strengthen economic ties and resolve bilateral trade

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issues. Portman envisioned that the forum will serve as an “early warning system” for any impending trade problems and a means of open communication. Both countries will meet again in Washington, DC on June 22, 2006. The Trade Policy Forum lets USTR explore the feasibility of a Free Trade Agreement (FTA) with India before announcing formal FTA negotiations. However, given the countries’ differences on the Doha Round negotiations and their link to India’s GSP benefits, the Indian economy’s complexity and the mid-2007 expiry of Presidential Trade Promotion Authority (TPA), it seems unlikely that the two countries will announce formal FTA negotiations anytime soon. Instead it appears that the Trade Policy Forum has evolved into a bilateral dialogue in which the two countries can express and attempt to resolve their differences over bilateral and multilateral trade issues, including market access, foreign investment and the Doha Round.

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## Multilateral

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### *Multilateral Highlights*

#### **G-6 Meeting Concludes on Disappointing Note With U.S., EU Standoff Remaining**

On June 29, ministers from the Group of Six (G-6) developed countries ended agriculture and non-agricultural market access (NAMA) talks without any breakthroughs in the stalled World Trade Organization (WTO) Doha Round negotiations. On the eve of this week's ministerial-level meeting in Geneva, trade ministers from the United States, the EU, Brazil, India, Japan, and Australia ended their initial round of discussions without bridging differences on agricultural market access and domestic supports or industrial tariff reductions. G-6 trade ministers reiterated their existing positions. The United States refused to offer further cuts in its farm subsidy programs unless other WTO Members – notably the EU and Japan – “substantially improved their offers to cut agricultural tariffs.” Sources noted that the United States, the EU, Japan and Australia pressured Brazil and India (representative of developing countries) to accept an industrial tariff reduction coefficient of 15 in exchange for a 10 coefficient for developed countries. Brazil and India rejected the proposed coefficients, stating publicly that “the gaps [among the proposals] remain quite large,” and that “there's no real sense of movement.”

Meanwhile, U.S. officials decried WTO Director-General Pascal Lamy's suggestions that a final Doha Round agreement on cutting tariffs and farm subsidies will probably center around the Group of 20 (G-20) developing countries' proposal that calls for reducing tariffs on farm imports, a NAMA coefficient of 20 for developing countries, and the United States reducing its overall limit on farm subsidy spending below \$20 billion per year. U.S. officials have stated that the proposal will not achieve the real improvements in agricultural market access that are a key requirement of a successful Doha Round agreement. The U.S. criticism came during the G-6 meeting when trade ministers questioned Lamy on his "magic" numbers. Lamy replied that he did not intend to present the figures as hard numbers, instead merely opining that the agriculture talks' final outcome was likely to be "around" the G-20 proposal and "around" a NAMA coefficient of 20. U.S. officials countered that they have “some serious reservations about the G-20 proposal on market access.”

For the EU, France ruled out any further EU concessions in the Doha Round agriculture negotiations, although France alone does not speak for the EU. French Agriculture Minister Dominique Bussereau, however, stated June 29 that a "large majority" of the EU's member states would not support the

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European Commission if it chose to move beyond its October 2005 agriculture proposal, which was widely criticized by WTO Members for its lack of ambition. He noted that 15 EU member states - including Germany, Italy, Spain, Ireland, Greece, and Poland - backed France's position that the Commission should not go beyond its current offer of developing country tariff reductions of 38 percent, with up to 8 percent of tariff lines designated as "sensitive." European Trade Commissioner Peter Mandelson, however, countered that an EU Council of Ministers meeting on the same day showed "strong support" for the Commission's negotiating position and a common desire to achieve a successful outcome in the WTO talks, indicative that the EU Member States would be willing to revise the EU offer.

Lamy has stated that failure to secure a full modalities agreement for agriculture and NAMA by the end of June "could put the entire Doha negotiations at risk" because of the fast-approaching deadlines for other Doha negotiations, including services. Despite Members agreeing to pursue all negotiating areas "in concert," the agriculture and NAMA negotiations have held other negotiating areas – most importantly services – hostage. Until Members can resolve their differences and produce final agriculture and NAMA modalities, the services negotiations will not progress. Because Members' home governments must verify and approve new schedules of services commitments, ample time is needed if there is any realistic hope for a final Doha Round deal to be concluded by the end of 2006. Thus, Lamy's call for a quick resolution to agriculture and NAMA modalities is not overstatement.

### **Lamy Circulates Agenda for Geneva Ministerial Talks in Agriculture, NAMA**

On June 28, 2006, World Trade Organization (WTO) Director General Pascal Lamy circulated a revised agenda for the June 29 – July 2 ministerial-level "green room" meetings in Geneva. The meetings' only purpose is to conclude stalled multilateral negotiations on modalities for agriculture and non-agricultural market access (NAMA). More than thirty Ministers are expected to participate in the four-day consultations which are crucial for the Doha Round's completion. If participating Members cannot strike a deal on outstanding agriculture and NAMA issues during the Geneva meetings, concluding the negotiations by the end of 2006 will be almost impossible.

An initial gathering of the trade ministers from the United States, the European Union, Brazil, India, Australia, and Japan is scheduled for the evening of June 29. The proposed agenda for the subsequent meetings suggests a sequencing of the key issues in the agriculture and NAMA modalities texts that the Members must resolve. This agenda will permit Members to focus on central questions in two rounds of talks. Once parties have reached a deal on the "round one" crucial issues, Ministers will switch to the

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second round of remaining, but less important, issues. In agriculture, the crucial issues are market access, sensitive products and domestic supports. In NAMA, they are the formula and coefficients for tariff reductions, the treatment of unbound tariff lines and the flexibilities for developing countries. The reasoning behind the sequencing concept is that the Members will be able to resolve the majority of outstanding issues (for example, the Chair identified 760 such issues in agriculture) once consensus on the crucial questions is reached. The focus on two rounds of core issues, however, means that no issues will be removed from the overall negotiating agenda.

In agriculture, the sequence of discussion will be:

### **1st Round:**

#### **Market Access**

- Tiered Formula for Tariff Reductions
- Thresholds and cuts: i) developed countries; ii) developing countries
- Sensitive Products: i) designation; ii) treatment (tariff cut, tariff quota expansion)
- Special and Differential Treatment
- Special Products: i) designation; ii) treatment
- Special Safeguard Mechanism: i) coverage; trigger and remedy.

#### **Domestic Support**

- Overall reduction of trade-distorting domestic support
- Reduction in: i) Final Bound Total Aggregate Measure of Support (AMS), ii) Blue Box (cap); iii) de minimis
- Disciplines on: i) product specific AMS caps; ii) other criteria for Blue Box
- Cotton

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### **2nd Round:**

#### **Export Competition**

Market Access: i) Tariff Capping; ii) special agricultural safeguard; iii) tropical and diversification products; iv) preference erosion; v) recently acceded Members; vi) Least-Developed Countries.

#### **Domestic Support: Green Box**

The NAMA sequence shall be:

#### **1st Round:**

- Formula and Coefficients
- Treatment of unbound tariffs (mark-up)
- Flexibilities for developing Members subject to the formula (Para. 8)

#### **2nd Round:**

- Least-Developed Countries (LDCs): i) flexibilities for LDCs; ii) market access for LDCs (duty-free and quota-free)
- Flexibilities for developing Members with low binding coverage (Para. 6)
- Small, Vulnerable Economies: i) criteria; ii) treatment
- Recently Acceded Members (RAMs)
- Non-reciprocal preferences
- Implementation period

In addition to the two sequences of discussion, Lamy distributed a comprehensive index for both agriculture and NAMA. These indices are intended to structure the overall discussions and to show how each element of the negotiations will fit into the final structure of modalities. We have attached the indices to this alert.

Separately, Lamy outlined on June 28 a possible compromise on agriculture and NAMA that he is expected to table if WTO Members fail to reach an agreement on their own. On agriculture, Lamy would propose that the United States increase its domestic support offer to \$20 billion and accept a smaller cut

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in agricultural tariffs than it has demanded. Lamy added that an agricultural market access compromise might be based on the G20 proposal of a minimum of 54 percent tariff reduction by developed countries. On NAMA, Lamy suggested that the United States allow developing countries a higher final tariff ceiling (possibly 20 percent) than the 15 percent that it has demanded.

### **U.S. and EU Officials Blame Each Other For Lack of Flexibility in Agriculture Negotiations**

On June 23, 2006, U.S. and EU officials criticized each other's failure to compromise during the multilateral agriculture negotiations as part of the World Trade Organization's (WTO) Doha Round. In a phone conference, United States Trade Representative (USTR) Susan Schwab and European Trade Commissioner Peter Mandelson agreed that the Doha Round was at a critical stage. Both officials, however, stated that the other side must offer new proposals on agricultural market access and domestic support before they would be open to compromise. According to Mandelson, the EU was encouraged by "President Bush's expression of support for an ambitious outcome to the WTO talks" at the June 21 U.S.-EU summit in Vienna. However, the United States "cannot get that [outcome] simply by pushing others to move" and "will have to give more if it wants to get more." Mandelson added that "there is a three-way bargain" in the agriculture negotiations, and that the Group of 20 (G-20) developing nations seeks steeper cuts in U.S. farm subsidies before it is willing to table the required cuts in industrial goods. According to Mandelson, once the United States "unlocks this by stepping forward with a better offer," the EU will "meet them both with a strengthened offer."

Meanwhile, Deputy USTR Peter Allgeier opined that he has seen no evidence that the EU is prepared to offer a more ambitious agriculture proposal. USTR Schwab noted that the United States has already made an "ambitious" and "generous" offer on agricultural domestic support and market access and is now "waiting for [U.S.] trading partners – the EU, Japan, advanced developing countries – to match."

Separately, a group of 57 senators wrote President Bush on June 23 urging him to direct U.S. trade negotiators to reject WTO Members' demands for further cuts in U.S. agricultural subsidies. The senators stated that "these countries have refused to make significant tariff reductions, and they insist on exceptions for sensitive and special products that will render meaningless the modest tariff reductions they have proposed." The senators therefore urged the President to "direct negotiators to reject any such proposal and instead insist on an ambitious, balanced result that will level the playing field for U.S. agriculture, open foreign markets to U.S. agricultural exports, and increase net income prospects for U.S. farmers and ranchers."

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The U.S. and EU recalcitrance on agriculture comes a week after press reports indicated that the United States would consider scaling back its demands on agricultural market access and offering new U.S. concessions on domestic farm subsidies. USTR Schwab, however, has denied these reports, and the United States has maintained its staunch refusal to move until the EU makes a more ambitious market access offer. Until either the United States or the EU takes the first step by submitting a new agricultural proposal, it appears that the current impasse will remain. Should the parties be unable to break this impasse in the next few weeks, it is unlikely that WTO Members will agree on full modalities for agriculture and non-agricultural market access (NAMA) in a timeframe that will allow for the completion of a comprehensive Doha agreement by end-2006.

### **EU, G-10 Reach Tentative Agreement on “Sensitive” Agriculture Products; USTR Maintains Firm Stance on Agricultural Market Access**

European Commission and Group of 10 (G-10) negotiators have reportedly agreed to a joint proposal for treatment of “sensitive” agricultural products in the World Trade Organization’s Doha Round agreement on agriculture. The EU/G-10 agreement, however, has yet to receive approval from several European Union (EU) member states that oppose the agreement’s early timing for fear that it weakens the EU’s negotiating position. The proposal addresses a G-10/EU disagreement with the United States over tariff rate quota (TRQ) import volume expansion for politically sensitive agricultural products, including rice for Japan and sugar for the EU. G-10 and EU countries insist that TRQ import volumes for the Doha agreement should be based on current import volumes; the United States, on the other hand, advocates linking TRQ levels to a fixed percentage of domestic consumption, allowing for far greater TRQ levels. The EU/G-10 scheme will retain the details of an earlier EU proposal that would base TRQ import volume increases on a combination of current import levels and domestic consumption. The United States had complained that such a “hybrid” system would only lead to small increases in TRQ volumes based on domestic consumptions. To address this concern, the new joint offer guarantees that TRQ volume expansion would reach a minimum of five percent of domestic consumption, even if the hybrid formula would have produced a smaller increase.

Separately, the Office of the United States Trade Representative (USTR) indicated that the U.S. position on agricultural market access remains firm, and that the United States will not “settle” for a less than ambitious outcome in Doha. Although the United States has demanded average agricultural tariff cuts of 66 percent, recent reports have speculated that U.S. negotiators might lower the U.S. demand to a level approaching the average 54 percent reduction that the Group of 20 (G-20) developing countries has proposed. USTR Susan Schwab and Deputy USTR Peter Allgeier separately denied these reports and

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others that indicated that the United States could also improve its offer on domestic agricultural support reductions. Schwab stated on June 22 that she had not made any new offers during a June 19th meeting with EU Trade Commissioner Peter Mandelson. Allgeier also noted on June 22 stated that “there is not a new US offer” and emphasized that “there has to be new market access opportunities created” to conclude a successful trade round.

USTR’s statements indicate that earlier press reports outlining a new U.S. willingness to compromise on agricultural market access and domestic supports may have overstated the United States’ current positions in the Doha Round agriculture talks. On the other hand, given the sensitivity of these issues with U.S. farmers and many in the U.S. Congress, Schwab and Allgeier may be seeking to downplay the possible U.S. moves in order to quell domestic opposition until the EU offers greater agricultural market access and developing countries like Brazil and India offer improvements in non-agricultural market access (NAMA). The EU’s latest proposal on “sensitive products,” however, will do little to assuage U.S. concerns on agriculture, as the United States opposed the last EU proposal, which is the basis for the new EU/G-10 offer. If the EU does not move quickly to propose more ambitious agricultural tariff cuts and TRQ levels for sensitive products, the new U.S. offers might never fully materialize.

### **WTO Agriculture and NAMA Chairmen Circulate Draft Modalities Texts**

On June 22, 2006, the World Trade Organization’s (WTO) Doha Round Agriculture Negotiations Chair Crawford Falconer and Non-agricultural Market Access (NAMA) Negotiations Chair Don Stephenson circulated their respective negotiating groups’ draft texts to WTO members. The draft texts come in anticipation of the June 29-July 2 ministerial-level meetings in Geneva that some trade officials – including WTO Director General Pascal Lamy – hope will result in full agriculture and NAMA modalities. Falconer noted in the Agricultural draft’s cover letter that the text contained numerous “divergences” but that “it reflects the reality of where we are.” Stephenson described the NAMA draft as “at best, a step in the direction of full modalities.” On June 26, the WTO released a slightly longer revised NAMA draft.

Member country trade ministers will center June 29-July 2 WTO ministerial negotiations in Geneva around the texts as they seek to reach a last-minute agreement on these issues and complete full modalities for both negotiating areas. The drafts’ large number of brackets indicate WTO Member’s inability to agree or compromise on a number of difficult issues including tariff reduction rates, tariff caps, sensitive agricultural products and exemptions for developing country Members. They also indicate the tremendous amount of work that Members must complete before full modalities will be reached. Yet there is precious little time left to complete this work. Members must produce a final Doha agreement by

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December 2006 if the United States is to have sufficient time to approve the agreement before the July 2007 expiry of Presidential Trade Promotion Authority (TPA). On June 23, WTO Director General Pascal Lamy warned that failure to meet the December 2006 deadline might lead to the round's collapse.

### **U.S. Blocks Ecuador Request for WTO Dispute Panel in Zeroing Case**

On June 19, 2006, the United States blocked Ecuador's request that the World Trade Organization (WTO) Dispute Settlement Body (DSB) establish a panel to adjudicate Ecuador's complaint against the United States' use of "zeroing" in its antidumping (AD) investigation of Ecuadorian shrimp imports. U.S. officials stated that "the United States is working with Ecuador to resolve the dispute and, as a result, Washington considered the request for a panel premature." Ecuadorian officials, however, stated that Ecuador has held consultations with the United States on the issue over the past several months, but that the talks have only narrowed differences. The Ecuadorian officials maintain that neither side "has yet been able to reach a mutually satisfactory resolution." Thus, the officials stated that they "are proceeding with their panel request."

Under WTO dispute settlement rules, Ecuador can renew its request at the next regular DSB meeting, scheduled for July 19. At that time, the United States will be unable to block the DSB's creation of the panel.

On November 15, Ecuador initiated WTO dispute settlement proceedings against the United States over the U.S. Department of Commerce's "zeroing" methodology in AD investigations. Ecuador specifically challenged Commerce's 2004 use of the zeroing methodology to calculate AD duties during its investigation of shrimp imports from Ecuador and other countries. Zeroing occurs when an investigating authority makes multiple comparisons of the export price and home market price of an allegedly dumped good, aggregating the results of those individual comparisons to calculate a dumping margin for the product as a whole. In aggregating the results, the authority applies a "zero" value where no dumping occurs rather than a "positive" dumping value; this practice, in turn, increases the likelihood of an affirmative finding of dumping and the size of the corresponding dumping margin.

According to Ecuador's request for WTO consultations, the "zeroing" methodology allows Commerce to "treat transactions with negative dumping margins as having margins equal to zero in determining weighted average antidumping margins," thus violating the WTO's Antidumping Agreement and Article VI of the General Agreement on Tariffs and Trade (GATT). As a result, Ecuador alleges that Commerce based its dumping calculations on "unfair and improper comparisons" between the export price and the normal price that created inflated dumping margins on which Commerce based its dumping determination.

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Without zeroing, Commerce would have not have found that Ecuadorian shrimp had been dumped at above de minimis levels and thus would not have imposed AD duties on the subject merchandise from Ecuador.

Ecuador's complaint is one of many active and completed WTO cases against the United States' zeroing methodology. On April 18, 2006, the WTO's Appellate Body (AB) issued its report regarding "United States — Laws, Regulations and Methodology for Calculating Dumping Margins ('Zeroing')" (DS294). In its report, the AB **reversed** the Panel's finding that the "zeroing" methodology applied by Commerce in the administrative reviews at issue was consistent with Article 9.3 of the WTO Anti-Dumping Agreement and Article VI:2 of the GATT 1994. The AB's justification for its ruling was that "the methodology applied by the Commerce in the administrative reviews at issue results in amounts of assessed anti-dumping duties that exceed the foreign producers' or exporters' margins of dumping." Japan had also requested the creation of a panel in February 2005 as part of its complaint (WT/DS322) against several U.S. laws and regulations related to "zeroing" and sunset reviews, as well as the specific application of those measures in 16 antidumping cases against Japanese imports; that panel decision has been delayed until late August or early September.

### **U.S. Reduces Agricultural Market Access Demands, Considers New Concessions to Kickstart Doha Round**

According to government sources, U.S. trade officials have scaled back demands on agricultural market access and are considering new U.S. concessions on domestic farm subsidies as part of the World Trade Organization's (WTO) Doha Round of multilateral negotiations. The United States acknowledged its new position in anticipation of the June 26 ministerial gathering in Geneva that WTO Director General Pascal Lamy has targeted for the completion of full modalities in agriculture and non-agricultural market access (NAMA). Sources state that President Bush and cabinet-level officials, including United States Trade Representative (USTR) Susan Schwab, met during the week of June 12 to discuss "what would constitute an agriculture package politically acceptable in the United States."

Under the parameters of the new proposal, the United States will seek a comprehensive deal that would provide "a little more" market access than a proposal by the Group of 20 (G-20) developing countries; an exact figure has not been made public. The G-20 proposal is widely considered a compromise between the most ambitious U.S. proposal and the least ambitious EU proposal. The Bush Administration is also willing to consider additional U.S. concessions on domestic subsidies, such as eliminating *de minimis* exemptions from the disciplines applied to Amber Box trade-distorting subsidies and changing the base

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years for determining product-specific limits on trade-distorting support in the Amber Box category. On domestic farm subsidies, however, U.S. officials have concluded that they cannot accept the cuts that the G-20 has demanded; the developing country group wants the United States to reduce its overall trade-distorting support ceiling by 75 percent.

U.S. and EU officials are meeting in Vienna this week for the annual U.S.-EU Summit. At the summit, President Bush stated that the United States will “do the very best we can to reach a [Doha] agreement that satisfies all parties’ desires.” Separately, European Agriculture Commissioner Mariann Fischer Boel told a June 19 meeting of the Council of Agriculture Ministers that “a deal in the Doha Round now was better than no deal.” Both sides have focused their discussion on the state of agriculture negotiations in the Doha Round.

According to sources, the new U.S. movement on market access would bring its demands closer to the EU’s offer. The EU has also signaled a recent willingness to improve its market access offer to something approaching the G-20 proposal. The new U.S. position might kickstart the stalled agriculture negotiations, and if sources are correct, the U.S. and EU agriculture proposals are now closer than ever. However, it remains to be seen whether the EU or other WTO Members will respond to the U.S. initiative during the Geneva ministerial gathering and provide ambitious new offers of their own on not only agriculture, but also NAMA issues that are almost as contentious. If so, the prospects for full modalities – and the entire Doha Round – will improve dramatically.

### **China Announces July 1 Automobile, Auto Parts Tariff Reduction**

On June 15, 2006, China’s Ministry of Finance (MOF) announced that China will lower import tariffs on automobiles and automobile parts. On July 1, the Customs Tariff Commission of the State Council will reduce tariffs on cars, sport utility vehicles (SUVs) and mini-buses from 28 to 25 percent *ad valorem*. Effective the same day, the Commission will reduce tariffs on certain auto parts including auto bodies, underpans and low and medium-emission engines to 10 percent from 13.8 to 16.4 percent. According to a June 15 MOF statement, the tariff reductions “complete [China’s] obligations in relation to auto and auto parts as written in [its] accession agreement to the World Trade Organization (WTO).” China’s 2000 WTO accession agreement required the government to reduce automobile tariffs to 25 percent by July 1, 2006.

The announcement follows separate WTO complaints by the United States (DS340), EU (DS339) and Canada (DS342) in March and April 2006, alleging that China’s automobile and auto parts import tariff scheme forces domestic content requirements on foreign automakers and indirectly subsidizes domestic

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auto parts manufacturers. Under an April 1, 2005 Rule on Imports of Auto-Parts Constituting a Complete Car, China imposes a 28 percent tariff on imported auto parts if their value or number exceeds 60 percent of a finished vehicle, but only charges 14 percent when this amount falls below 60 percent. The 28 percent tariff is the same rate for completed imported vehicles.

Sources indicate that the MOF announcement will not influence the United States' decision to request a WTO dispute settlement panel to rule on its complaint. The MOF regulations address only *ad valorem* tariff rate reductions but do not address the complaints' primary issues of discrimination against imports and subsidization of Chinese goods. The U.S., EU and Canadian complaints center on claims that China's auto parts import scheme violates WTO rules, including Articles II (Scheduled Commitments) and III (National Treatment) of the General Agreement on Tariffs and Trade (GATT), Article II of the Agreement on Trade-Related Investment Measures (TRIMs) and Article III of the Agreement on Subsidies and Countervailing Measures (SCM). The MOF regulations appear only to address the GATT Article II claims. Although the United States has not indicated that it intends to request a panel, WTO rules permit dispute claimants to do so if the mandatory 60-day consultation period expires without resolution of the issue. The United States, the EU and China concluded consultations on May 12 but did not reach an agreement.

Although the establishment of a panel appears likely, officials have not ruled out the possibility of the parties reaching a compromise outside the formal consultation process. In March 2004, China and the United States reached a negotiated settlement after the United States requested the establishment of a WTO dispute settlement panel on China's discriminatory tax treatment of imported semiconductors. Under the negotiated settlement, China agreed to eliminate value added tax (VAT) refund availability for domestically produced or designed semiconductors. In the case of auto parts imports, however, reaching an agreement with China might be a more difficult matter because auto sector issues tend to be contentious, and numerous complainants might complicate settlement negotiations. A panel is thus more likely in this case than in 2004. China has never participated as a respondent in a WTO dispute settlement panel process. However, both U.S. and EU trade officials have stated that they will begin to take a more aggressive and direct approach regarding China's WTO compliance, rather than continue their traditional "quiet diplomacy." The U.S. and EU actions on auto parts indicate that they intend to follow through with their rhetoric.

### **June 14 Agriculture Meeting Produces Nothing; U.S. Officials Stand Firm on Current Agriculture Offer**

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On June 14, 2006, agriculture delegations from the United States, the EU, Brazil, India, Australia, and Japan unsuccessfully concluded a senior-level meeting in Geneva aimed at resolving differences in the World Trade Organization (WTO) Doha Round agriculture trade negotiations. Sources indicate that WTO Members did not make any progress on the critical outstanding issues of market access and domestic support during the meeting, actually ending the meeting early because they were at an impasse.

WTO Director-General Pascal Lamy has stated that an agreement on full modalities in agriculture depends on (i) an EU market access offer that is more ambitious than it's the EU's October 2005 proposal; and (ii) a U.S. offer on agriculture subsidy cuts deeper than those offered in it's the United States' October 2005 proposal. Neither Member made such a proposal at the June 14 meeting, as U.S. and EU officials even provided advance warning to other WTO Members that they would not likely move at that time.

Separately, Rep. Bob Goodlatte (R-VA), chairman of the House Agriculture Committee, stated on June 14 that Congress will oppose any further U.S. concessions in the WTO agriculture negotiations. Goodlatte stated that "there is absolutely no support in the Congress for further concessions on [the United States'] part" until it sees "sufficient movement" by other WTO Members, including the EU. Goodlatte added that "no other country has introduced a proposal that even comes close to the U.S. proposal," and that he conveyed to Lamy that the United States "has yet to see strong action on the part of other WTO members, such as the EU, and we will not accept an agreement that benefits our international trading partners by putting our producers at a disadvantage."

U.S. and EU officials will meet in Vienna, Austria the week of June 19 for an annual summit that will focus on "necessary steps to put the WTO negotiations back on track." It is unlikely that the United States and the EU will achieve any breakthroughs in Vienna; United States Trade Representative (USTR) Susan Schwab will not attend the Vienna Summit and will instead discuss WTO negotiations, particularly agriculture, in Washington, D.C. with Indian Commerce Minister Kamal Nath. Schwab's absence diminishes the prospects for any breakthrough in Vienna, but there may still be reason for optimism in the agriculture negotiations. Goodlatte's statements indicate that the United States could be willing to improve upon its October 2005 domestic support offer if the EU and other Members provide more ambitious offers on agricultural market access. This flexibility is a significant step for the United States, which has until now maintained that its domestic support offer was final. Lamy has set the end of June as the target date for agreement on the negotiating modalities for agriculture and nonagricultural market access (NAMA). Although Members are still far apart on several contentious issues in the Agriculture and NAMA negotiations, full modalities might still be achievable within a reasonable timeframe if other

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Members follow the United States' lead and express a willingness to improve their offers, rather than a hard-line stance. Lamy's end-June timeframe might not be possible, but end-July modalities – the true “drop-dead” date for such agreement – might be.

### **China Presents Developing Country Proposal, Receives Negative Response**

On June 12, 2006, China presented a proposal that would allow it and other recently acceded World Trade Organization (WTO) Members to undertake lower tariff cuts on industrial goods as part of the WTO's Doha Round agreement on nonagricultural market access (NAMA). The proposal could also exclude many tariff lines from any cuts and would allow recently acceded Members to apply a coefficient for cutting tariffs that is one-and-a-half times higher than the coefficient used by other developing countries. In addition, the proposal allows recently acceded Members (i) to apply less than the agreed formula cuts for up to 15 percent of their industrial tariff lines (with the cuts no less than 50 percent of the agreed formula cuts); or (ii) to exempt up to 10 percent of tariff lines from any cuts, with a three-year grace period before implementing tariff commitments and an three years more than developing countries to complete the implementation. Chinese officials justified their proposal on the grounds that “recently acceded Members should be expected to make lower tariff cuts than other WTO Members because of the extensive market access commitments in their WTO accession agreements.” WTO Members that would likely benefit from China's proposal would be those that joined the WTO after its 1995 creation, including Taiwan, Saudi Arabia, Ecuador, Croatia, Albania, Macedonia, Georgia, Jordan, Moldova, Armenia, Kyrgyzstan, Oman, Bulgaria, Mongolia, and Panama.

The United States, the EU, and other WTO Members criticized the proposal as an “accumulation of flexibilities” that was “out of the question.” Canada, Switzerland, Norway, and New Zealand also disagreed with the idea of offering recently acceded Members a higher coefficient than developing countries, and developing countries including Costa Rica, Mexico, and Turkey argued that recently acceded Members should only be offered longer implementation periods.

Although the United States has expressed hope that China increase its role in the Doha Round negotiations and act as a more “global responsible stakeholder,” the China proposal is certainly not what U.S. officials had in mind. Indeed, the United States has worked to limit NAMA flexibilities for developing countries, not to expand them beyond what developing countries now offer. The negative response to the proposal, both from developed and developing countries, indicates that the proposal will not likely make

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into a final NAMA agreement. Instead, it has served only to distract WTO ministers from their critical objective: to achieve NAMA modalities as soon as possible based on existing offers.

### **WTO's Lamy Meets with U.S. Agriculture Groups, Discusses State of Doha Negotiations**

On June 12, 2006, World Trade Organization (WTO) Director-General Pascal Lamy met privately with representatives of U.S. agriculture groups in Washington, D.C. Sources indicate that Lamy discussed the current state of Doha Round agriculture negotiations, and that the groups pressed for "meaningful" market access for U.S. farm products. According to Bob Stallman, president of the American Farm Bureau Federation (AFBF), Lamy was in a "listening mode" and noted the groups' concerns that the United States not compromise its current position in the negotiations. Lamy is scheduled to meet with United States Trade Representative (USTR) Susan Schwab and members of Congress during his June 12-13 visit to Washington, D.C. Lamy has also scheduled a meeting of key trade ministers in Geneva during the week of June 26; the meeting's aim is to produce agreement on full modalities for agriculture and non-agricultural market access (NAMA).

The AFBF's Stallman also opined that, based on discussions with U.S. negotiators, the United States will not "scale back" its agriculture demands. He added that the U.S. agriculture community would only support a final agreement if it has an "economically positive benefit for U.S. agriculture" and includes "additional market access for U.S. farm products that more than offsets the reductions demanded of the United States in domestic support." Schwab, however, stated on June 9 that the United States "was not closed to improving or scaling back its [October 2005] offer on domestic support." Schwab noted that that offer was a "conditional offer," and that the United States had not ruled out "improving it [or] pulling it back."

With Doha Round agriculture negotiations still stalled and with fears of a reduced "Doha-lite" agreement emerging, the U.S. agriculture community is using its lobbying power to defend its interests. U.S. agriculture groups fear that the United States will cut back or completely revise its offer in a last-ditch effort to move the negotiations forward. It is unlikely, however, that U.S. trade officials would significantly reduce or eliminate U.S. demands for ambitious agricultural market access; on the other hand, Schwab's statements indicate that the United States is not ruling out bettering its offer on domestic supports – a move requested by many developing nations, including Brazil. Although this change would not please U.S. farm interests that already compromised on subsidy levels for the October U.S. offer, it might not eliminate their support for a final Doha Agreement if the agreement contains the significant market access

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reductions that the U.S. has demanded. It is unclear, however, whether some WTO Members, most notably the EU, will agree to such ambitious market access demands. If they do not, it is unlikely that the U.S. will make further domestic support concessions or, more importantly, that a broad-based, ambitious agriculture agreement is even possible.

### **Chambliss, U.S. Farm Groups Urge U.S. To Resist Demands for Deeper Cuts; WTO Ag Chair Rushing to Complete Draft Text on Modalities**

Senate Agriculture Committee Chairman Sen. Saxby Chambliss (R-GA) on June 2 urged the Bush Administration to “hold the line” against other World Trade Organization (WTO) Members’ demands for further U.S. concessions on agricultural domestic support in the WTO’s Doha Round negotiations. Chambliss stated that the United States has already “committed to enough” through its October 2005 proposal that calls for sharp reductions in agricultural tariffs and subsidies, including a 60 percent reduction in the United States’ allowable “Amber Box” support. He noted that “the United States has put an ambitious and balanced offer on the table” and added that “the Europeans have not come forward and met our offer in kind.” He also opined that the U.S. agricultural offer will need to be “calibrated” to reflect other WTO Members’ market access offers, “or a final [WTO] agreement will not pass the U.S. Congress.” Chambliss added that “incremental adjustments from the Europeans on a market access offer that already falls far short” will not ensure Congressional passage of a WTO agreement.

Separately, U.S. agriculture organizations, including the American Farm Bureau Federation, the National Milk Producers Federation and the USA Rice Federation, sent a letter to President Bush on June 1 which stated that they will not accept cuts in domestic support beyond those in the October 2005 U.S. offer. The American Soybean Association, American Sugar Alliance, National Association of Wheat Growers, National Barley Growers Association, National Corn Growers Association, National Cotton Council, USA Dry Pea and Lentil Council, U.S. Canola Association, and Wheat Export Trade Education Committee also signed the letter.

The letter states that “reductions in, and limitations on, domestic support for U.S. agriculture are only acceptable if the negotiations yield an important net gain for American farmers and ranchers through commitments on market access and other trade-distorting policies by [U.S.] trading partners.” It notes, however, that “at this point in the negotiations it seems clear that other countries have ‘pocketed’ the U.S. offer on domestic support without being prepared to even come close to the U.S. proposal on increasing market access in both developed and developing countries.” The letter states that “it is important to make

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clear that American agriculture will not support any deeper cuts in domestic support than those already proposed by the administration."

Meanwhile, the chairman of the Doha Round negotiating group on agriculture, Crawford Falconer, stated on June 2 that he would "call a halt to efforts aimed at forging compromises among small groups of key delegations" and instead focus on drafting texts. Falconer stated that he would prepare a revised reference paper on market access and circulate that paper to WTO Members on June 9 in an effort to spur further discussion. He also noted that he would draft a revised reference paper on export competition during the week of June 12 that he will also circulate to WTO Members. Falconer stated that he will also devote much of his attention in drafting a text on modalities that will serve as the basis for ministerial negotiations at the end of June. The draft text will include critical formulas and figures for reducing agricultural tariffs and cutting farm subsidies. Falconer hopes to release the draft text on modalities before the June 19 target date that WTO Director-General Pascal Lamy established.

The prospects for agriculture modalities are not good as WTO Members remain unwilling to compromise on contentious issues such as tariff and subsidy cuts, "sensitive" products exceptions, and the developing country flexibilities for tariff and subsidy reduction commitments. Senator Chambliss' statements likely come after deliberations with the U.S. agricultural groups that expressed their opposition to further U.S. subsidy concessions. Chambliss' words also likely reflect the sentiment of many on Capitol Hill – that Congress will not accept a "Doha-lite" agreement that provides deep agricultural subsidy concessions by the United States yet limited cuts from other WTO Members in agriculture and other negotiating areas. The U.S. farm lobby is far too influential to allow such a deal to go through Congress without significant opposition. Meanwhile, it is unclear whether Falconer's efforts will spur movement in the stalled negotiations. Indeed, the papers will be worthless unless WTO Members can reach a compromise and break the deadlocked Agriculture and NAMA talks because the texts will not reflect the consensus among WTO Members that is necessary to forge a final Doha Round Agreement. The fate of the Round rests in the hands of the primary actors – the United States, the European Union, Brazil and India – not Chairman Falconer.

### **USTR Official Urges Greater Asian Cooperation in Doha Round, Voices Support for Asian Trade Relationships**

At the Asia Pacific Economic Cooperation (APEC) Ministers Responsible for Trade (RFT) meeting in Vietnam, Deputy United States Trade Representative (USTR) Karan Bhatia on June 1 encouraged Asian nations to play a more cooperative role in breaking the deadlocked World Trade Organization (WTO)

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Doha Round negotiations. He also urged China to increase intellectual property rights (IPR) protection efforts and emphasized the importance of U.S. trade relations with Asia. Bhatia attended the meeting with trade ministers from the 21 APEC member states.

Bhatia noted the need for greater cooperation from Asian nations to ensure the Doha Round's successful conclusion. Bhatia stated that because the Asia Pacific region had greatly benefited from liberalized trade under the WTO, he expected the region "to be strongly supportive of an ambitious Doha agenda." He also indicated that China, Japan and other large Asian economies should shoulder more of the responsibility to prevent the Round's failure. China's Commerce Minister Bo Xilai responded to Bhatia's remarks and urged the United States and the European Union to lower agricultural trade barriers and to "make more of an effort" to move the round's agricultural negotiations forward.

Bhatia called on China to strengthen IPR protection and to further open its markets to fair competition for foreign firms. Bhatia described IPR protection as "almost a market access" issue for U.S. exporters that are heavily invested in knowledge-based industries. China has taken a number of steps to enhance its IPR enforcement including an April 2006 announcement that it would require manufacturers to pre-install legal operating system software on all personal computers manufactured or sold in China. However, according to the American Chamber of Commerce in China, increases in IPR violations outpace China's improved enforcement efforts.

Bhatia also stressed the importance of continued economic U.S. engagement with the region to maintain open global trade relations. The United States has completed free trade agreements (FTAs) with Australia and Singapore and has begun FTA negotiations with Malaysia, South Korea and Thailand. On May 31, U.S. and Vietnamese trade officials signed a bilateral economic agreement that paves the way for Vietnam's World Trade Organization (WTO) Accession. According to USTR, trade with APEC accounts for \$1.8 trillion worth of U.S. goods and services trade. With the Doha Round stalled on agricultural and non-agricultural market access (NAMA) issues and with USTR increasing its FTA activities in Asia, Bhatia's statements conform to USTR's current trade agenda in the region. Should the Doha Round fail, USTR will rely on its bilateral FTA schedule, but the United States will do everything possible to prevent the Round's collapse. This includes reaching out to Asian nations in an attempt to pressure them into greater participation in the Round's outcome. It is unclear, however, whether the nations – especially China – will follow the U.S. recommendations and take a more active and public role, as they typically do not become prominently engaged in the WTO deliberations.

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### **Mexico Requests New Consultations with U.S. on Stainless Steel Dispute**

On May 26, 2006, Mexico issued a new request for World Trade Organization (WTO) dispute settlement consultations with the United States to discuss a Mexican complaint (DS325) against U.S. anti-dumping duties (AD) on imported stainless steel sheet and strip in coils from Mexico. Under WTO Dispute Settlement Body (DSB) procedures, if the United States and Mexico fail to resolve their differences within 60 days, Mexico may request the establishment of a WTO dispute panel to rule on its complaint.

On January 5, 2005, Mexico requested initial consultations with the United States concerning: (i) certain final anti-dumping determinations made by the United States Department of Commerce (DOC) against imports of stainless steel sheet and strip coils from Mexico; and (ii) certain generally applicable United States anti-dumping laws, regulations and administrative practices. According to Mexico, in each of the four AD determinations, DOC applied a methodology involving the "zeroing" of negative dumping margins. Under its "zeroing" methodology, DOC treats "transactions with negative dumping margins as having margins equal to zero in determining weighted average antidumping margins." In Mexico's view, DOC's use of zeroing may have resulted in excessive dumping margins for the Mexican stainless steel imports. Mexico also challenges two final administrative review determinations on stainless steel imports that DOC issued after the first consultation request. The first, published in the U.S. Federal Register on January 26, 2005, concerned imports of stainless steel sheet and strip in coils between July 2002 and June 2003; the second determination, published in the Federal Register on December 12, 2005, covered imports between July 2003 and June 2004. In both reviews, DOC focused on one Mexican producer, ThyssenKrupp Mexinox.

DOC first imposed anti-dumping duties on stainless steel sheet and strip in coils from Mexico in July 1999. Mexican steel imports are currently subject to an anti-dumping duty rate of 2.96 percent.

DOC's zeroing methodology has proved controversial. In *U.S. - Lumber AD Final* (WT/DS264), the WTO's Appellate Body (AB) upheld a Panel ruling that DOC's zeroing methodology in AD investigations was inconsistent with Article 2 of the WTO's Antidumping Agreement. On April 18, 2006, the AB in *United States — Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")* (DS294) reversed the Panel's finding that DOC's zeroing methodology in the administrative reviews at issue was consistent with Article 9.3 of the WTO Anti-Dumping Agreement and Article VI:2 of the GATT 1994. The AB's justification for its ruling was that "the methodology applied by the DOC in the administrative reviews at issue results in amounts of assessed anti-dumping duties that exceed the foreign producers' or

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exporters' margins of dumping." The AB found that such a result contravened both Article 9.3 of the Anti-Dumping Agreement, which "clearly stipulates that 'the amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2,'" and Article VI:2 of the GATT 1994, which "provides that '[i]n order to offset or prevent dumping, a Member may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product.'" Thus, the AB found that the United States acted inconsistently with these provisions.

The AB's 2006 ruling likely prompted Mexico to renew its complaint against DOC's zeroing methodology and to amend it to include DOC's subsequent administrative review determinations against stainless steel from Mexico.

### **Lamy Announces Ministerial Meeting to Advance WTO Talks; Falconer Releases More Agriculture Reference Papers**

On May 30, 2006, World Trade Organization (WTO) Director-General Pascal Lamy announced to WTO Members that he would organize a ministerial gathering in Geneva during the week of June 26 in an effort to give "a final political push" to the Doha Round negotiations on agriculture and non-agricultural market access (NAMA). Lamy opined that WTO Members could still reach an agreement on full modalities if negotiators "work with a sense of urgency" and realize that the timeframe for securing such a deal is "a matter of days." He noted that the chairs of the agriculture and NAMA negotiating groups will be submitting draft texts around June 19 that will "serve as the basis for the final phase of the modalities negotiations." Lamy also reminded WTO Members that their revised market access offers on services are due by the end of July. Sources have warned, however, that the services offers could be problematic if Members cannot achieve agriculture and NAMA modalities by the end of June.

Lamy indicated that the late June ministerial gathering would be "an informal series of meetings along the lines of those which took place in Geneva in July 2004 when WTO members secured "framework" agreements for advancing the agriculture and NAMA talks." Sources note that Lamy wishes to see involvement by a "critical mass of key trade ministers" during the June meeting but hopes that the meeting "does not transform into an unwieldy gathering."

Separately, Ambassador of New Zealand and Chair of the WTO's Doha Round of agricultural negotiations Crawford Falconer released three reference papers presenting the state of play on the issues of Amber Box, Blue Box, and Overall Reduction In Trade Distorting Domestic Support. Falconer released the papers in an effort to encourage discussion among WTO Members and update them on the status of agricultural negotiations. The EU, at which many WTO Members have directed the blame for

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the stalled agriculture talks, did not issue a response to the reference papers but did note that the it would only agree to move if other WTO Members, including the United States, came forward with "satisfactory offers" on domestic support and industrial tariffs.

Already postponed from their April 30, 2006 deadlines, prospects for agriculture and NAMA modalities grow increasingly dim, as WTO Members remain unwilling to compromise. Contentious issues include the tariff and subsidy cuts numbers, the exceptions for "sensitive" products from the agreed farm tariff cuts, and the developing country flexibilities for tariff and subsidy reduction commitments. Given the EU's inflexibility and other WTO Members' refusal to move until the EU issues a more ambitious agriculture offer, it remains to be seen whether Lamy's actions and Falconer's latest reference papers will do anything to advance the failing talks. Even if the actions do produce movement, there may simply be too little time for Members to reach full agriculture and NAMA modalities and final services offers in order to meet the December 2006 deadlines for a comprehensive Doha agreement.

### **U.S. and Vietnam Sign Bilateral WTO Accession Deal**

On May 31, 2006, Deputy United States Trade Representative (USTR) Karan Bhatia and Vietnamese Deputy Minister of Trade Luong Van Tu signed a bilateral market access agreement as part of Vietnam's bid to accede to the World Trade Organization (WTO). According to the Office of the USTR, the bilateral deal "will create significant new opportunities for U.S. producers and exporters of industrial and agricultural goods as well as U.S. services providers." Bhatia also noted that the agreement "opens a vibrant and growing market for American agricultural goods, a range of services, and manufactured products [and] also opens the door for Vietnam to join the international rules-based trading system." He stated that "through this agreement, Vietnam will become more transparent in its regulatory trade practices, enhance the economic freedoms enjoyed by its people, and establish a more level playing field between Vietnamese and foreign companies."

As part of the bilateral agreement, Vietnam will become a party to the Information Technology Agreement (ITA), which provides for duty-free entry into signatory countries of IT products such as computers and semiconductors. Vietnam has also agreed to zero duties on aircraft. USTR notes that U.S. service providers "will benefit in particular from more open access in the areas like telecommunications (including satellite services), distribution, financial services (including branching for insurance in addition to existing branching commitments with respect to banking) -- and energy services." The bilateral market access agreement also addresses the application of science-based measures "in regulating products that are a priority to U.S. exporters of agricultural products."

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Under WTO accession procedures, Vietnam must conclude bilateral market access deals with any WTO Member that requests negotiations. Following the successful conclusion of all bilateral negotiations, the most favorable concessions from each agreement will be incorporated into Vietnam's WTO market access schedules for goods and services and will be included in Vietnam's final accession package. Vietnam has concluded bilateral talks with all the countries that have requested them. It must now conclude multilateral negotiations which will be memorialized in Vietnam's working party report and accession protocol. These documents will detail how Vietnam will bring its domestic trading rules in line with WTO requirements.

Responses to the agreement have been mostly positive. The National Retail Federation (NRF) stated that it "endorses the bilateral market access agreement signed today between the United States and Vietnam, and offers the full support of the U.S. retail industry as the process of Vietnam's accession to the World Trade Organization moves forward to congressional consideration of Permanent Normal Trade Relations status for Vietnam." The National Pork Producers Council expressed its "support for Vietnam's accession to the WTO" and noted that "U.S. pork exports have climbed to unprecedented levels as a result of past trade agreements, so we look forward to a significant increase in U.S. pork exports to Vietnam." The American Manufacturing Trade Action Coalition, however, has stated that "this deal is a disaster for U.S. manufacturing and the U.S. textile industry in particular" and noted that "this agreement provides an open invitation to continue the devastating trend of outsourcing the very jobs that are so critical to our middle class."

USTR will next seek U.S. Congressional approval of Permanent Normal Trade Relations (PNTR) status for Vietnam. Although not a prerequisite for Vietnam's WTO Membership, the grant of PNTR to Vietnam is necessary under WTO rules before the United States can take advantage of Vietnam's new market access commitments as part of its WTO accession. Bhatia noted that "there is strong bipartisan support for the PNTR, and USTR will continue to work closely with both parties in Congress in the hopes of completing that process as soon as possible." It is unknown when Congress will consider PNTR status for Vietnam.

With the completion of an agreement with the United States, Vietnam should complete its accession by the end of 2006.

### **U.S.-Russia Bilateral WTO Accession Talks Progressing But Timeframe for Completion Remains Uncertain**

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On May 25, 2006, United States Trade Representative (USTR) Rob Portman stated that the bilateral negotiations as part of Russia's accession to the World Trade Organization (WTO) have made good progress in recent weeks. Portman cautioned, however, that neither side has been able to come up with a specific deadline for completing the talks. Portman stated that both countries "have no time frame" and must "work through the issues [so that] we can come to resolution of these final issues as soon as possible."

Weeks ago, Portman opined that the two sides were "close" to agreement and expressed hope that they could conclude a bilateral accession deal by mid-July, when Russia will host the annual G-8 economic summit meeting in St. Petersburg. Portman has consistently noted, however, that while it would be "good" if both sides concluded talks by mid-July, "there is no particular time frame" for completing the negotiations. He noted that U.S. and Russian negotiators have made progress in the contentious areas of industrial market access, agriculture, and intellectual property rights (IPR), but other issues remain unresolved.

Russia's WTO accession has raised the ire of several leading Congressmen: Senate Finance Committee Chairman Sen. Charles Grassley (R-IA) and the committee's ranking minority member Sen. Max Baucus (D-MT), as well as Chairman of the House Ways and Means Committee Rep. Bill Thomas (R-CA) and the committee's ranking minority leader Rep. Charles Rangel (D-NY), released a May 11 letter to President Bush opposing Russia's WTO accession. The four lawmakers stated that they will continue to oppose the agreement until Russia takes a series of steps demonstrating its willingness to abide by WTO rules, particularly on IPR and agricultural market access.

WTO accession procedures mandate that acceding countries conclude bilateral market access deals with any WTO Member that requests negotiations. Russia has yet to conclude bilateral deals with the United States, Australia, Colombia and Moldova. Russian officials set year-end 2006 as the revised target for Russia's accession, and Russia must complete its remaining bilateral negotiations by fall 2006 deadline in order to meet this deadline. Sources note, however, that an early-2007 accession is more likely, and given the state of Russia's bilateral talks with the United States, this timeframe seems more feasible.

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