



September 2007

Japan External Trade Organization
WTO and Regional Trade Agreements
Monthly Report

IN THIS ISSUE

United States.....	1	Multilateral	45
Free Trade Agreements	31		
Customs	44		

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

Table of Contents

Summary of Reports	ii
Reports in Detail	1
United States	1
Special Report: Issues Surrounding the TPA Renewal Debate.....	1
US Department of Commerce Releases 2007 National Export Strategy Report	14
Cato Institute Explores State of US Manufacturing in Global Economy.....	22
United States Highlights	25
House Approves Economic Sanctions Against Iran.....	25
Agriculture Secretary Johanns Resigns; President Bush Names Deputy Secretary as Acting Secretary of Agriculture	26
House Approves Legislation on International Trade and US Small Businesses	27
United States and Israel Form High Technology Forum	28
President Bush Nominates Padilla For Undersecretary on International Trade	29
USTR Seeks Comments on Annual NTE Report on Trade Barriers.....	30
Free Trade Agreements	31
CAF XI Conferees: US Congress Must Approve US-Latin American FTAs Soon.....	31
Special Report: US-Peru FTA Moves Forward in Congress as US, Peruvian Officials Meet to Discuss Bilateral Agreement.....	35
Free Trade Agreements Highlights	40
ITC Issues Report on Economic and Sectoral Impact of KORUS FTA.....	40
ITC Releases Assessment Report on US-Panama FTA.....	41
Korean Government Submits KORUS FTA to National Assembly for Consideration.....	41
Customs	44
Customs Highlights	44
Ports in Panama, Colombia, Israel Become Operational Under CSI Program.....	44
Multilateral	45
WTO Panel Issues Decision in US-Turkey Rice Dispute	45
Multilateral Highlights	51
Negotiators End Three Weeks of Intensive Agriculture Negotiations, Will Reconvene in October to Continue Discussions.....	51
China Files WTO Complaint Against US Duties on Imports of Glossy Paper	52
APEC Leaders Meet to Discuss Climate Change, WTO Doha Negotiations	54
Doha Negotiations Re-Commence, Although Washington Politics Could Further Stall Negotiations .	55

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

Summary of Reports

United States

Special Report: Issues Surrounding the TPA Renewal Debate

Since the 1970s, US Presidents have promoted free trade by negotiating Free Trade Agreements (FTAs) with foreign trading partners. The Presidential authority to negotiate these FTAs is authorized by Congress, and is known as Trade Promotion Authority (TPA). TPA expired on June 30, 2007, and it remains unclear when it will be renewed. This report examines the issues surrounding TPA renewal, the supporters and opponents of TPA renewal, and the President's alternative options for promoting trade with foreign trading partners in the absence of TPA.

US Department of Commerce Releases 2007 National Export Strategy Report

On July 17, 2007, the US Department of Commerce (DOC) released the "2007 National Export Strategy." According to the DOC, the goals of this report are to raise awareness in the American business community about the advantages of exporting, to convince US businesses that are not exporting to consider exporting, and to get those businesses that are exporting to enter more overseas markets. We review the report below.

Cato Institute Explores State of US Manufacturing in Global Economy

On September 25, 2007, the Cato Institute hosted a panel discussion on the state of US manufacturing in a global economy. Speakers provided their views on the current state of US manufacturing and whether trade has affected US manufacturing trends. We review herein their discussion.

United States Highlights

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

- House Approves Economic Sanctions Against Iran
- Agriculture Secretary Johanns Resigns; President Bush Names Deputy Secretary as Acting Secretary of Agriculture
- House Approves Legislation on International Trade and US Small Businesses
- United States and Israel Form High Technology Forum

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

- President Bush Nominates Padilla For Undersecretary on International Trade
- USTR Seeks Comments on Annual NTE Report on Trade Barriers

Free Trade Agreements

CAF XI Conferees: US Congress Must Approve US-Latin American FTAs Soon

On September 25, 2007, the House Ways and Means Committee held a mock mark-up of the implementing legislation of the PTPA; the Senate Finance Committee held its mock mark-up on September 20, 2007. We review below the mark-ups and the discussion between Committee members.

Special Report: US-Peru FTA Moves Forward in Congress as US, Peruvian Officials Meet to Discuss Bilateral Agreement

There have been several developments in the US Congress regarding the US-Peru Trade Promotion Agreement (PTPA) in September 2007. This report reviews the following developments:

- On September 25, 2007, the House Ways and Means Committee held a mock mark-up of the implementing legislation of the PTPA; the Senate Finance Committee held its mock mark-up on September 20, 2007. We review below the mark-ups and the discussion between Committee members.
- Prior to its mock mark-up, on September 11, 2007, the Senate Finance Committee held a hearing on the 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://www.senate.gov/~finance/sitepages/hearing091107.htm>.
- Separately, US and Peruvian officials scheduled visits to Peru and Washington respectively to discuss the PTPA. On September 6, 2007, Peruvian officials met with members of the US Congress to discuss implementation of the FTA. US Secretary of Commerce Carlos Gutierrez led a large, bipartisan Congressional delegation to Panama, Peru, and Colombia the week of September 10 to discuss with government, business, labor, and civil society representatives the pending US Free Trade Agreements (FTAs) with the three Latin American countries and the impact of these FTAs on the United States.

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

Free Trade Agreements Highlights

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

- ITC Issues Report on Economic and Sectoral Impact of KORUS FTA
- ITC Releases Assessment Report on US-Panama FTA
- Korean Government Submits KORUS FTA to National Assembly for Consideration

Customs

Customs Highlights

We would like to alert you to the following Customs highlights:

- Ports in Panama, Colombia, Israel Become Operational Under CSI Program

Multilateral

WTO Panel Issues Decision in US-Turkey Rice Dispute

On September 21, 2007, the World Trade Organization (WTO) released the WTO Panel's ruling in *Turkey — Measures Affecting the Importation of Rice* (DS334). The WTO Panel ruled that Turkey's import restrictions on rice violate Turkey's obligations under the WTO Agreement on Agriculture and the General Agreement on Tariffs and Trade (GATT) 1994. We review herein the Panel decision.

Multilateral Highlights

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

- Negotiators End Three Weeks of Intensive Agriculture Negotiations, Will Reconvene in October to Continue Discussions
- China Files WTO Complaint Against US Duties on Imports of Glossy Paper
- APEC Leaders Meet to Discuss Climate Change, WTO Doha Negotiations
- Doha Negotiations Re-Commence, Although Washington Politics Could Further Stall Negotiations

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

Reports in Detail

United States

Special Report: Issues Surrounding the TPA Renewal Debate

Summary

Since the 1970s, US Presidents have promoted free trade by negotiating Free Trade Agreements (FTAs) with foreign trading partners. The Presidential authority to negotiate these FTAs is authorized by Congress, and is known as Trade Promotion Authority (TPA). TPA expired on June 30, 2007, and it remains unclear when it will be renewed. This report examines the issues surrounding TPA renewal, the supporters and opponents of TPA renewal, and the President's alternative options for promoting trade with foreign trading partners in the absence of TPA.

Analysis

I. Background

TPA refers to legislation that explicitly enables the President to negotiate trade agreements with foreign countries, and then to submit those agreements to Congress for approval under special, expedited procedures. Under TPA, when it comes time for Congress to vote on a negotiated trade agreement, it can either accept or deny the agreement in its entirety, providing a straight up-or-down vote: Congress cannot amend any part of the agreement. This authority is intended to strengthen the President's negotiating leverage and credibility by reassuring foreign trading partners that Congress will promptly consider agreements without making changes that would prolong the negotiations process.

TPA was first adopted in the Trade Act of 1974. Since then, Presidents have used it to negotiate and implement bilateral and multilateral agreements, including agreements in the Tokyo Round of multilateral trade negotiations, the US-Canada FTA, the North American Free Trade Agreement (NAFTA), and the Uruguay Round accords, which included the establishment of the World Trade Organization (WTO).

Since TPA's enactment, its core provisions have remained largely unchanged. TPA legislation requires that the President request an extension of TPA after a certain period of time. TPA can be extended or renewed in one of two ways. Under the "passive" route, an automatic extension of TPA is granted unless either the House or the Senate passes a formal disapproval resolution. A resolution of disapproval may not be considered unless it is introduced and then reported out of either the House Ways and Means or

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

Senate Finance Committee. In the past, such resolutions have been introduced, but none has been passed in either the House or the Senate. Under the “active” route, TPA will automatically expire unless both the House and Senate preemptively pass legislation to renew it before the expiration date. If Congress does not consider and vote on TPA renewal, then it will expire as scheduled. This second scenario reflects Congress’ recent approach to TPA: because Congress did not consider TPA renewal before June 30, 2007, TPA was not renewed.

In 1994, Congress declined to renew this authority to President Clinton. Eight years later, Congress restored TPA to President Bush via the Trade Act of 2002. Since the reestablishment of TPA, the Bush Administration has enacted FTAs with thirteen countries including Singapore, Chile, Australia, Morocco, Bahrain, Oman, the Dominican Republic, and several countries in Central and South America. The President has recently negotiated trade agreements with Peru, Panama, Colombia, and South Korea using TPA.

II. Issues Surrounding TPA Renewal

The Trade Act of 2002 was a highly contentious and largely partisan political approach to trade and TPA. The newly rebalanced 110th Congress will likely approach TPA differently than previous Congresses. TPA renewal in 2007 raises several concerns among new members of Congress, leading some to call for reform of US economic and trade policies. Many legislators highlight the potentially negative effects of globalization and trade liberalization, such as lost jobs, lower wages, a widening income gap, and an increasing trade deficit. Other legislators propose stricter enforcement of obligations in trade agreements with certain countries. Some call for the re-ordering of trade partner priorities, to forge closer ties with Japan, the European Union (EU), and other larger economies through FTAs.

A. Labor Standards

According to the February 2, 2007 Congressional Research Service (CRS) Report for Congress, labor standards are perhaps the single most contentious trade issue for TPA renewal. The bipartisan Trade Promotion Authority Act of 2002 won support among Democrats because it established negotiating objectives for labor standards. Now that TPA has expired, many Congressional members want to further require that the labor laws of each US trading partner include International Labor Organization (ILO) core labor standards, which would be enforceable with sanctions. The issue of implementation and enforcement of ILO labor standards has been the strongest point of contention between the Democratic and Republican parties. Supporters of ILO standards contend that the issue is a human rights consideration, and will also ensure that US workers will not have to compete with underpaid and

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

mistreated workers abroad. Opponents of the introduction of ILO labor standards contend that these standards will be misused for protectionist purposes and should be addressed in fora other than trade agreements.

B. Other Trade Issues

In addition, newly elected members of Congress support revamping programs like the Trade Adjustment Assistance (TAA) program to aid workers whose employment is adversely affected by FTAs. TAA provides training, job search and relocation allowances, income support, and other reemployment services to workers whose jobs have been lost, or whose wages or working hours have been reduced, by increased imports. The effectiveness of these assistance programs is disputed by legislators.

Others in Congress want US trade remedy laws to be maintained in the face of trade negotiations. In the past, Congress conditioned the approval of TPA on the continued ability of the United States to enforce its antidumping, countervailing duty and safeguard laws. Past agreements have also been conditioned on effective domestic and international discipline of unfair trade practices. Both TAA and the focus on US trade remedy laws could overshadow TPA renewal.

III. Supporters of TPA Renewal

On January 31, 2007, President Bush formally requested TPA renewal. The Bush Administration claims that FTAs have opened new markets for America's exporters and that these agreements promote job security for 12 million Americans whose work depends on exports. The President further claims that free trade promotes new economic opportunities for American workers employed by exporters, and improves the quality of life for American consumers by providing a greater choice of goods at better prices. The Administration considers previous trade agreements like the NAFTA to be successful, and claims that these agreements boost local economies and create jobs for trading partners in developing countries.

United States Trade Representative (USTR) Susan Schwab has actively promoted the Bush Administration's trade policies, including TPA renewal. Supporting the President's call for the extension of TPA, Schwab has stated that "America needs to remain open for business to the 95 percent of the world's consumers living outside the United States." Apart from the Bush Administration, there are other supporters of TPA renewal.

A. Congressional Supporters of TPA Renewal

Congressional attitudes toward TPA renewal is generally partisan, with Republicans supporting it and Democrats opposing it. However, some Democrats, like House Ways and Means Committee Chairman

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

Charles Rangel (D-NY), support TPA renewal, whereas some Republicans, such as Congressman Walter Jones (R- NC), oppose it. Legislators began calling on Congress to renew TPA in early 2007. In January 2007, Senate Finance Committee Ranking Member Charles Grassley (R-IA) called for TPA renewal and asserted that implementing trade agreements with countries that violate labor and environmental standards is “the best thing [the United States] can do to advance labor rights and environmental protections.” He claimed that the implementation of FTAs would increase the rate of economic growth, business activity, and awareness of labor rights, and create more active oversight of labor and the environment. On February 14, 2007, Representative Jeb Hensarling (R-TX) proposed the **Trade Promotion Authority Extension and Enhancement Act of 2007** (H.R. 1042) that would extend TPA until 2011. However, this bill was deferred to the House Ways and Means Committee and the Subcommittee on Trade on February 23, 2007; it has not been discussed on the House floor since then.

Some TPA supporters were hopeful that the bipartisan trade agreement to amend the labor and environmental provisions of the Peru, Colombia, Panama, and Korea FTAs, negotiated by Congress and the President in May 2007, would set an example for future cooperation on trade and TPA renewal. In those agreements, President Bush accepted Congressional Democrats’ demands for enforceable labor and environmental requirements for trading-partner countries. Despite this apparent bipartisan success, TPA renewal has not been formally debated in either house of Congress, and legislation to extend TPA has not been discussed in recent months. Some senior Democrat TPA supporters, like Chairman Rangel, had hoped that a breakthrough in World Trade Organization (WTO) Doha Round negotiations at the June 2007 G-4 summit in Potsdam, Germany, would help overcome opposition to TPA renewal in the Democratic party: Congressional sources had predicted that a breakthrough in the Doha talks could provide Congress with enough impetus to renew TPA, if only to complete a comprehensive Doha agreement. However, those talks broke down in late June and as a result of the breakdown, Congress did not consider TPA renewal before it expired on June 30, 2007. Chairman Rangel's office has reiterated that no serious discussions about the renewal of TPA have taken place in Congress. Speaker of the House Nancy Pelosi (D-CA) has echoed Chairman Rangel's statements and has noted that TPA renewal is currently “not a legislative priority.”

B. Private Sector Supporters

Lobbyist groups supporting TPA renewal include organizations representing farmers, ranchers, and business groups. These organizations believe that TPA is necessary to compete in a global marketplace.

For example, the National Association of Manufacturers (NAM) believes that TPA enables the United States to implement advantageous FTAs. According to NAM, the US manufacturing trade deficit with

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

FTA partners has decreased by USD 10 billion, whereas the trade deficit with non-FTA countries has increased by USD 82 billion. NAM would like to see TPA renewed to reduce trade barriers and keep American manufacturers competitive in the global economy.

Daniel Griswold, the director of the Center for Trade Policy Studies at the pro-trade Cato Institute, believes that TPA should be renewed because "the rest of the world is moving towards more openness, integration, and more prosperity." Griswold fears that the expiration of TPA will cause the United States to lose a competitive advantage, while other trading partners progress.

Business Roundtable President John Castellani has stated that when TPA previously lapsed, from 1994 to 2002, "the United States fell dangerously behind in negotiating important trade and investment agreements." Castellani said that with the new WTO and FTAs in place, twenty percent of US workers are dependent on trade for their livelihood. According to Castellani, "the record is clear: trade agreements produce jobs for Americans."

In a June 30, 2007, press release, the Coalition of Service Industries (CSI) strongly urged a TPA extension, stating that this would "ensure that the Administration has the tools needed to keep negotiating equally high-quality agreements with other key markets." According to CSI, FTAs are a source of domestic growth. The group says that US cross-border exports of services exceeded USD 400 billion in 2006, and that the United States enjoyed a surplus of more than USD 70 billion.

Bob Stallman, President of the American Farm Bureau Federation, stated that "future economic opportunities for America's farmers and ranchers depend largely on [the United States'] ability to create expanded trading opportunities." He further commented that TPA approval will provide US negotiators with the necessary authority to address the many trade barriers faced by American agriculture.

IV. Opponents of TPA Renewal

A. Congressional Opponents of TPA Renewal

The 2006 Congressional elections changed the balance of the 110th Congress by introducing a number of anti-trade or fair-trade Democrats into both houses of Congress. Furthermore, President Bush's popularity has fallen to an all-time low in recent months. Some Congressional Republicans want to distance themselves from the President, to avoid politically damaging their prospects for the 2008 elections.

Senate opposition to TPA renewal occurred recently during a June 14, 2007, discussion of an energy bill. Senator Sherrod Brown (D-OH) questioned current US trade policies and raised concerns that recent

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

FTAs have led to an increased trade deficit, a loss of US manufacturing jobs and worsening labor conditions for workers abroad. Senator Brown declared that before TPA renewal can be considered, existing trade agreements must strengthen the middle class.

Opposition to TPA renewal in the House of Representatives was raised on June 18, 2007, by Representatives Michael Michaud (D-ME), Linda Sanchez (D-CA), and Betty Sutton (D-OH). Factors for opposition included the loss of domestic manufacturing jobs, environmental concerns abroad, and the 2006 Congressional elections of anti-trade Democrats, indicating public dissatisfaction with Presidential trade agreements.

On June 29, 2007, Speaker of the House Pelosi said in a written statement that renewing TPA was not a legislative priority. Rather, she stated that Congress must first expand the "benefits of globalization to all Americans." Most Congressional Democrats believe that existing trade agreements, such as the NAFTA, should be rewritten before new trade agreements are made. Further, they would like to require the enforcement of product safety and labor and environmental regulations.

B. Private Sector Opponents

Labor and environmental organizations opposed to TPA renewal consistently lobby Congressional representatives. Examples include the International Association of Machinists and Aerospace Workers, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the United States Business and Industry Council, Friends of the Earth, and the American Manufacturing Trade Action Coalition. These and other organizations would prefer that Congress negotiate trade agreements, rather than the President. Some opponents view TPA as the relinquishment of Congressional power: Article I of the Constitution empowers Congress "to regulate commerce with foreign nations" and "to lay and collect taxes, duties, imposts, and excises."

AFL-CIO President John Sweeney said in a May 11, 2007 statement that his organization opposes the renewal of TPA. He said that TPA and FTAs, such as those negotiated with Colombia and South Korea, result in "lost jobs, stagnating wages, and a spiraling trade deficit." He further stated that the AFL-CIO would like to see a review and revision of existing trade agreements before the President enters into new ones.

The United States Business and Industry Council said the expiration of TPA is a "major victory for domestic producers and is an essential step toward developing new US trade policies that promote a healthier growth for America and the world."

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

V. Non-TPA Renewal

A. Limits on Administration

Analysts believe that the absence of TPA will likely constrain most significant US trade negotiations, particularly those involving reciprocal bilateral, regional, and multilateral trade agreements. The common view is that US trade partners may be reluctant to negotiate with the United States without TPA since any agreement would be subject to ordinary legislative procedures and amendment by Congress. Without TPA, the Administration and USTR are unlikely to pursue any major FTAs. There is a small chance that without TPA, USTR could decide to pursue smaller, less significant agreements like the US-Jordan FTA. According to the Congressional Research Service, “many sector-specific and other narrowly targeted agreements have been concluded in the past without TPA, and the United States has also launched negotiations prior to having TPA authority in place; . . . [b]oth situations suggest that the conduct of US trade negotiations can continue in some form without TPA.” But given the May 2007 Congressional-Administration agreement on US trade policy and Congress’ focus on US trade policy, it seems unlikely that USTR will pursue any new FTA without TPA .

B. Administration Focus Issues without TPA

Without TPA, analysts state that the Administration will likely focus on other trade initiatives, the majority of which are unilateral. Should Congress decide not to renew TPA, the Administration will likely focus on four areas: (i) unilateral trade liberalization; (ii) other bilateral agreements; (iii) the Farm Bill; and (iv) WTO activity.

1. Unilateral Trade Liberalization

In the absence of TPA, the Administration could shift its attention to unilateral trade liberalization. This includes reducing tariffs on US imports, dismantling tariff and non-tariff barriers to trade, reducing or eliminating quotas and other trade-distorting measures, and opening the US market to more foreign manufacturers and consumers. Proponents of unilateral trade liberalization believe that the benefit of better access to imports for US producers translates into better access to foreign markets and that unilateral trade liberalization reduces costs in the supply chain, which in turn allows businesses to be more competitive abroad. Without the mandate to negotiate new trade agreements, the Administration could focus on its domestic market and work with US producers and manufacturers interested in opening US borders to further imports and reduced supply costs. On the other hand unilateral trade liberalization is unpopular politically, despite well-grounded economic support, because most politicians still view trade as a zero sum game (i.e., that tariff reduction is a “concession” that must only occur when accompanied

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

by foreign market access). Thus, the extent to which the US government will pursue a unilateralist agenda is unclear, particularly considering the current political weakness of the President and rising protectionist sentiment among the congressional majority.

The lone exception to unilateralism's limited use lies in US preference programs for developing countries, through which the United States provides preferential trade benefits (usually, duty- and/or quota-free market access) to developing economies in order to promote their economic growth. Over the past year, the Administration and the US Congress have already shifted some of their focus to US preference programs, although some of this shift was due to the schedule expiration of key programs in December 2006. Both the US Generalized System of Preferences (GSP) and the Andean Trade Preferences and Drug Eradication Act (ATPDEA) were renewed at that time. GSP is now scheduled to expire in December 2008. ATPDEA was renewed for six months (until June 30, 2007), and Congress has just provided it with another eight-month extension. On June 27, the House of Representatives approved a bill (H.R. 1830) to extend the ATPDEA for an additional eight months, until February 29, 2008. On June 28, the Senate unanimously approved H.R. 1830, thus extending ATPDEA benefits through February 2008. The African Growth and Opportunity Act (AGOA) has also become a focus for Ways and Means Committee Chairman Rangel. With US preference programs a major topic of debate on Capitol Hill, it seems likely that in the absence of TPA, the Administration will turn to US preference programs and focus on how to amend them so that they are more efficient and provide proper help to the developing nations that are the beneficiaries. The Senate Finance and the House Ways and Means Committees are closely examining altering US preference programs, and several legislators – such as Chairman Rangel – have stated that they will explore whether these programs are useful for developing economies. Without TPA, the Administration could increase its focus on US preference programs and work closely with Congress in implementing any possible changes. Unfortunately, US domestic politics often prevents such preference programs from providing meaningful market access for politically sensitive commodities such as textiles and sugar. Because it is these very products at which most developing countries excel (or even possess the capabilities to produce), the value of unilateral preference programs will likely remain limited.

2. Other Bilateral Agreements

Without TPA, the Administration is unlikely to announce or resume any formal FTA negotiations with US trading partners. However, USTR will likely focus on other bilateral agreements – such as Trade and Investment Framework Agreements (TIFAs) and Bilateral Investment Treaties (BITs) – with US trading partners. None of these agreements require congressional approval, and pursuing such agreements would provide USTR with two benefits: (i) pursuing TIFAs and BITs with US trading partners allows the

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

Administration to increase US presence in different markets and still draw on some free-trade benefits; and (ii) completing TIFAs and BITs – normally considered the first steps USTR takes before announcing FTA negotiations – would set the stage for USTR to announce future FTAs with these trading partners if/when Congress renews TPA. The Administration is actively negotiating TIFAs and BITs in Asia, Africa, and other regions, and will likely continue to do so without TPA.

3. Farm Bill 2007

The 2002 Farm Bill is scheduled to expire on September 30, 2007, and Congress has already begun exploring renewal of the Farm Bill or a possible re-write of the bill. On July 27, 2007, the House of Representatives approved the Farm Bill Extension Act of 2007 (H.R. 2419) by a margin of 231 to 191. House Agriculture Chairman Collin Peterson (D-MN) introduced H.R. 2419 on May 22, 2007. H.R. 2419 would, with few exceptions, extend the 2002 Farm Bill through 2012 by authorizing USD 286 billion for farm subsidies, conservation, nutrition, rural development and energy programs. The Senate began to consider its version in September. In the absence of TPA, the Administration will likely focus on its farm support programs and whether subsidy levels and other features under the Farm Bill conform with US WTO obligations. The Administration will most likely work closely with Congress to ensure that the Farm Bill meets US WTO obligations yet still responds to US agricultural producer demands.

4. WTO Involvement: Doha and Disputes

In the absence of TPA, the Administration will likely continue to negotiate with other WTO Members in the context of the Doha Development Round. Continuing negotiations without TPA would demonstrate to other WTO Members that the United States – and the Administration – is still very interested in multilateral liberalization and the benefits that the round would provide developing nations. However, without TPA, dramatic concessions among WTO Members are unlikely, because the United States cannot guarantee that the congressional approval process will not alter US commitments and obligations in the draft agreement. Thus a breakthrough on Doha will be very difficult, if not impossible, without TPA. To circumvent this issue, the Administration could guarantee its trading partners that it would not submit any final Doha agreement to Congress without TPA in the event that WTO Members achieved such a deal. However, this requires WTO Members' significant faith that the US political system could quickly pass TPA once a Doha Agreement is in place. Because a final WTO agreement would be politically sensitive for all Members, the likelihood that their officials would expose themselves to intense political scrutiny while waiting for Congress to pass TPA seems unlikely.

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

Completely removed from TPA is US involvement in WTO disputes. Regardless of the presence of fast track authority, the United States will likely continue its WTO Dispute Settlement Body (DSB) activity, especially related to China. The United States has already brought three complaints against China to the DSB related to government subsidies, intellectual property rights, and market access. The United States must also contend with other WTO Members' complaints regarding US practices and policies, such as US zeroing in antidumping investigations. Without TPA, the Administration will continue to defend itself from WTO Members' complaints and to seek redress for alleged violations by other US trading partners. In this way, the WTO dispute settlement system could serve as an alternative means to increased US market access without FTAs or Doha.

Outlook

To date, the issue of TPA renewal has not formally been debated in the 110th Congress, although promoters of TPA may raise the issue in the second session of Congress during the fall of 2007. If TPA is renewed, it will be the result of a bipartisan compromise that reconciles many contested issues surrounding the trade debate. Without TPA, however, the Administration is unlikely to initiate or renew any formal FTA negotiations, although the Administration still has several trade options on which it can focus. These options include unilateral liberalization, the Farm Bill, and other WTO activity. With the June 30, 2007, expiry of TPA, the Administration must now shift its priorities and re-assess each of these different policy options. However, none of these options has a realistic potential to provide the broad-based trade liberalization that bilateral and multilateral trade agreements – made possible only through TPA – provide. Thus, much like in the late 1990s, US trade liberalization efforts will likely diminish for some time in light of non-renewal of TPA.

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

Table 1: Factors Favoring and Against TPA Renewal

Factors Favoring TPA Renewal	Factors Against TPA Renewal
Supported generally by Republicans and business groups.	Rebalanced Congress after 2006 elections is led by Democrats.
Allows American farmers, small businesses to participate in the global marketplace.	All-time low rankings for Presidential approval regarding Iraq and immigration.
Supported by the Bush Administration.	2008 elections and lame duck President.
Strong Economy: steady growth of GDP, low unemployment rate; record high exports. ¹	Loss of large numbers of manufacturing jobs and no increase of median wages.
Ohio as example of trade benefits: Ohio's exports increased more than any US state since 2000. ²	Ohio as example of trade disadvantages: 200,000 manufacturing jobs lost in Ohio since 2000. ³
International support for FTAs.	Stalled Doha Round world trade talks.
Increased use of FTAs since 2002.	Increased trade deficit: now at USD 414.5 billion (as of end-July 2007). ⁴
NAFTA Model seen as source of economic growth. ⁵	NAFTA Model seen as source of job loss. ⁶
	Labor conditions on past FTAs have not been enforced. ⁷
	Labor and environmental standards are difficult to enforce. ⁸

¹ White House, *State of the Economy*, <http://www.whitehouse.gov/infocus/economy/2007/> (accessed July 5, 2007).

² White House, *Opening New Markets for America's Workers*, <http://www.whitehouse.gov/news/releases/2004/03/20040310-1.html> (accessed July 5, 2007).

³ 153 Cong. Rec. H6642 (daily ed. June 18, 2007).

⁴ US Census Bureau, *US Total Trade Balance in Goods and Services*, <http://www.census.gov/foreign-trade/statistics/historical/gandsbal.pdf> (accessed September 11, 2007).

⁵ White House, *Expanding Opportunity: Why Do We Need Trade Promotion Authority?*, <http://www.whitehouse.gov/infocus/internationaltrade/10reasons.html> (accessed June 25, 2007).

⁶ 153 Cong. Rec. H6642 (daily ed. June 18, 2007).

⁷ *Id.*

⁸ *Id.*

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

Table 2: Congressional Supporters and Opponents of TPA Renewal

Congressional Supporters of TPA Renewal	Congressional Opponents of TPA Renewal
Democrats	
Rep. Charles Rangel (New York)	House Speaker Nancy Pelosi (California)
Sen. Max Baucus (Montana)	Sen. Sherrod Brown (Ohio)
	House Majority Leader Steny Hoyer (Maryland)
	Sen. Byron Dorgan (North Dakota)
	Rep. Linda Sanchez (California)
	Rep. Betty Sutton (Ohio)
	Sen. Debbie Stabenow (Michigan)
	Sen. Michaud (Maine)
Republicans	
Sen. Charles Grassley (Iowa)	Rep. Walter Jones (North Carolina)
Rep. Jeb Hensarling (Texas)	
Rep. Jim McCrery (Louisiana)	
Rep. Wally Herger (California)	

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

Table 3: Private Sector Supporters and Opponents of TPA Renewal

Private Sector Supporters of TPA Renewal	Private Sector Opponents of TPA Renewal
Farming Groups	Environmental Groups
American Farm Bureau Federation Food Products Association	Friends of the Earth
National Grain and Feed Association	Defenders of Wildlife
AgTrade Coalition	
Pro-Business Groups	Labor Groups
Business Roundtable	AFL-CIO
National Association of Manufacturers	International Association of Machinists and Aerospace Workers
Electronic Industries Alliance	United States Business and Industry Council
Coalition of Service Industries	American Manufacturing Trade Action Coalition
Communication Workers of America	

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

US Department of Commerce Releases 2007 National Export Strategy Report

Summary

On July 17, 2007, the US Department of Commerce (DOC) released the “2007 National Export Strategy.” According to the DOC, the goals of this report are to raise awareness in the American business community about the advantages of exporting, to convince US businesses that are not exporting to consider exporting, and to get those businesses that are exporting to enter more overseas markets. We review the report below.

Analysis

I. Overview of US Trade in 2006

The report states that the US trade numbers in 2006 show “a positive story about the state of America’s trading relationships with the rest of the world.” The report notes that US exports remain high and that international measures of competitiveness show that the United States ranks high in some factors such as business setting, microeconomic market conditions, ease of doing business, and innovation. The report also states that global economic numbers suggest that the world economy is in the midst of one of its longest and broadest periods of growth. According to the report, all of these factors could increase the economic confidence of the US business community.

According to the report, US exports grew 13 percent in 2006 and grew faster than imports; the report also states that at USD 1.4 trillion, US exports were greater than the entire economies of countries such as Canada and Spain. The report notes that trade makes up a large share of the US economy—estimated at 25 percent in 2006.

The report states that exports are growing in all areas of the US economy, mostly in manufactured goods industries. The report notes that manufacturing continues to be an important portion of US exports, representing 89 percent of all merchandise exports in 2006. According to the report, the United States’ greatest strength in manufacturing exports continues to be in high-tech and high-value-added industrial sectors such as aerospace, electronics and computers. The report also states that the United States remains the world’s leading exporter of services, and continues to run a sizable surplus in services trade in areas such as business, professional, and technical services, insurance services, and financial services, freight and port services, royalties and license fees, travel, and passenger fares.

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

II. US Competitiveness in the Global Economy

The report states that strong services exports and the increasing growth of US goods exports have kept the United States as the world's largest exporter, followed by Germany, China, and Japan. The report notes that one of the most important factors keeping US exports competitive has been strong US labor productivity growth. The report also states that other key factors driving strong US productivity include international openness, flexible labor markets and the low costs of starting a business in the United States.

According to the report, the Global Competitiveness Index 2006/2007 (GCI), published by the World Economic Forum (WEF), ranked the United States as the world's most competitive large economy. The United States placed sixth overall behind five smaller countries (Switzerland, Finland, Sweden, Denmark, and Singapore). The United States previously ranked first place in 2005, but the WEF cited large macroeconomic imbalances, particularly public indebtedness associated with repeated fiscal deficits and historically high trade deficits, as the main reason for lowering the US ranking in 2006. The report notes that the WEF's Business Competitiveness Index (BCI) considers individual companies' global competitiveness and it ranked the United States first, ahead of Germany and Finland.

The report also states that key factors keeping the United States at the top included measures of domestic competition, financial markets and innovative capacity. According to the report, a new measure, the Global Innovation Index (GII), was developed by the Europe Institute for Business Administration (INSEAD) to help show the degree to which individual nations and regions respond to the challenge of innovation. The GII ranks the United States in first place and credited the United States with having a better environment for innovation and with being more effective in exploiting innovation. The GII also noted the United States' need to improve aging communications and transportation infrastructure.

The report states that another possible indicator of competitiveness is the ability to attract inward foreign direct investment (FDI). The United Nations Conference on Trade and Development (UNCTAD) has developed two methodologies to measure the amount of FDI attraction: (i) the Inward FDI Performance Index (which ranks 141 countries by the FDI they receive relative to their economic size; the report shows the United States in decline since 1990, a trend driven largely by investments in extractive industries especially oil and gas in smaller countries, but also by the rise of new competition for FDI from emerging markets); and (ii) the Inward FDI Potential Index (a reflection of the stability of the structural variables measured; the report shows few changes from year to year in the US ranking). The Potential Index has ranked the United States at the top position since it was first published in 1991.

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

III. Track Record of Success in Individual Markets between 2001 and 2006

The report states that there are four US Free Trade Agreement (FTAs) implemented since 2001 that show that US exports in certain sectors have experienced rapid growth, often as a direct result of particular market access gains included in the FTA.

A. Jordan

The report states that since the implementation of the US-Jordan FTA in 2001, US exports to Jordan have risen 92 percent. US agricultural exports have also increased 60 percent since 2005. Among the biggest growth sectors between 2001 and 2006 were vehicles, aluminum, books, newspapers, and manuscripts.

B. Singapore

According to the report, US exports to Singapore have risen by 49 percent since the entry into in force of the US-Singapore FTA in 2004. The biggest dollar gains between 2003 and 2006 were in tools, cutlery of base metals, mineral fuels, oil, organic chemicals, precious stones, and metals exports.

C. Chile

The report states that exports to Chile from the United States rose by over 150 percent since the implementation of the US-Chile FTA in 2004. The strongest performing sectors between 2003 and 2006 were aircraft, spacecraft, mineral fuels, oil, vehicles, and financial services.

D. Australia

The report states that US exports have grown 12.3 percent since the implementation of the US-Australia FTA in January 2005. According to the report, the US-Australia agreement has eliminated tariffs on over 99 percent of lines for exports of US industrial and consumer goods. Significant gains between 2004 and 2006 include rubber, rubber products, precious stones, metals, perfumery, cosmetics, and agricultural exports. (**See Appendix 1: US Merchandise Total Trade with FTA Partners.**)

IV. Strategy Initiatives in Priority Markets

The report states that over the past three years, the National Export Strategy has included a focus on a list of priority markets. The government's Trade Promotion Coordinating Committee (TPCC) identifies a few target markets each year because of their large economies and high rates of growth. The 2007 report notes that the priority markets include the economies of China, India, and Brazil. According to the report, US exports to these markets grew a combined 30 percent in 2006.

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

A. China

According to the report, since China became a member of the World Trade Organization (WTO) at the end of 2001, US exports to China have grown from USD 19 billion to USD 55 billion. China has moved from the ninth largest export market to the fourth largest for the United States. The report states that US exports to China in 2006 were high in a number of sectors such as high value-added products like machine tools, and agricultural, fishery, and forestry exports. According to the report, the US-China Business Council reports that 81 percent of their members surveyed claimed their Chinese operations are profitable, with more than half saying that profitability rates for their China operations meet or exceed global profits margins.

According to the report, despite these positive signs, China continues to be one of the most challenging markets in the world for US companies. The report states that US businesses tend to underestimate the challenges of market entry in China. According to the report, there are four challenges of doing business in China: (i) China's business environment lacks predictability (according to US businesses, China's current legal and regulatory system can be opaque, inconsistent, and arbitrary, and law enforcement is inconsistent); (ii) China does not effectively protect and monitor intellectual property rights (IPR); (iii) China's Government still practices or allows some mercantilist-style policies (according to the report, although China has made significant progress toward a market-oriented economy, some parts of its central, provincial, and local bureaucracies still protect local firms, especially state-owned firms, from imports, while encouraging exports); and (iv) the State and the Communist Party directly manage the only legal labor union (according to the report, there is an incomplete understanding of the importance of free enterprise and fair competition in many sectors of the Chinese business community).

According to the report, US government trade promotion agencies will continue to focus on China's second-tier cities in 2007. These cities account for 53.5 percent of the country's imports. Tainjin, for example, imports more foreign goods than larger cities like Beijing. The report states that US trade agencies are focusing on many of the high-growth sectors such as agriculture-related products, aviations equipment, safety and security, pollution control and energy efficiency, health care, and construction. Key events and activities include: (i) a mission to help US providers of energy efficiency equipment and services identify opportunities in the China market; (ii) the third annual US Health Care Forum, which will take place in late 2007, to encourage improvements in the Chinese regulatory environment and promote US healthcare equipment, services, and pharmaceutical products; (iii) trade missions organized by US states to China; and (iv) continued work within the US-China bilateral working groups such as the Joint Commission on Commerce and Trade (JCCT) and the Strategic Economic Dialogue (SED).

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

B. India

The report notes that the US-India commercial relationship has improved over the past few years but that US trade agencies are still encouraging India to reform bureaucratic and extensive tariff barriers to trade. According to the report, US companies also experience problems with tariff and non-tariff barriers, weak protection and enforcement of IPR, a lack of transparency, and poor infrastructure. The report states that key factors for successfully doing business in India include: (i) finding good partners who have knowledge of the local market as well as legal, policy, and procedural issues; (ii) early planning; (iii) due diligence and follow-up; and (iv) “perhaps most importantly, patience and commitment.”

The report states that bilateral trade and investment flows increased opportunities for US companies, thus leading to the United States and India’s establishing several bilateral dialogues, including: (i) the US-India Economic Dialogue; (ii) the US-India Trade Policy Forum (TPF); (iii) the US-India CEO Forum (a mechanism for soliciting private sector input to energize the Economic Dialogue and guidance to both governments on how to enhance bilateral trade and investment through policy initiatives); (iv) the US-India Agricultural Knowledge Initiative (AKI) (a mechanism that brings US and India private/public sectors together to work on innovative projects that will increase Indian agricultural productivity, help Indian farmers prosper, and strengthen trade); (v) the Commercial Dialogue; (vi) the US-India High-Technology Cooperation Group (HTCG) (a mechanism meant to increase bilateral trade in high-technology products by identifying and removing trade barriers); and (vii) the India Business Development Mission. US government trade agencies will continue their work on trade issues with India through these different mechanisms for the remainder of 2007 and into 2008.

C. Brazil

The report states that the United States continued to be Brazil’s largest trading partner in 2006, and that promising sectors for US exports to Brazil include agricultural equipment, agriculture, aircraft and parts, airports, computer software, e-commerce, highways, insurance, iron and steel, IT hardware, medical equipment, mining, oil and gas, pharmaceuticals, pollution equipment, ports, railroads, safety equipment, telecommunications, and tourism. The report notes that US exporters to Brazil continue to face a number of challenges. According to the report, the most common complaints of US companies include: (i) Brazil’s high tax burden; (ii) an array of government regulations and bureaucratic “red tape”; and (iii) a confusing product standards process.

The report states that the US and Brazilian governments have developed three new bilateral fora to discuss trade issues including: (i) the US-Brazil Commercial Dialogue (a mechanism that covers trade

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

facilitation, standards, intellectual property, and export and investment promotion); (ii) the US-Brazil CEO Forum; and (iii) the US Small Business Administration, which is actively engaged in a dialogue with Brazil's Ministry of Development, Industry, and Trade to increase cooperation on small business development and facilitate trade relationships between US and Brazilian small businesses.

Outlook

The 2007 National Export Strategy report indicates that US government trade agencies—such as the DOC and the Office of the United States Trade Representative—will continue to focus on bilateral fora and export-enhancing activities meant to increase US market access in other economies. The creation of new bilateral trade mechanisms and fora with certain trading partners indicates that US trade agencies will concentrate heavily on increasing market access in key markets. Most of this focus will likely be on China—specifically, dismantling trade and non-tariff barriers to doing business there. As noted, India and Brazil will also play important roles in the 2008 export strategy. The export focus on these economies does not signify that the United States will ignore other countries, of course. The report discussed the positive growth stemming from implementation of US FTAs. Thus, it seems that US trade agencies are still focused on “competitive liberalization” and the implementation of bilateral trade agreements. Although the Bush Administration’s ability to commence negotiations or conclude ongoing FTA negotiations with US trading partners was lessened with the June 30, 2007, expiry of Presidential Trade Promotion Authority (TPA), US government trade agencies will likely continue to work on strengthening FTAs already in place or implementing pending FTAs, such as the US-Korea, US-Peru, US-Colombia, and US-Panama FTAs, if Congress approves these agreements.

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

Appendix 1: US Merchandise Total Trade with FTA Partners, 2004–2006 (USD millions)

	2004	2005	2006
Exports:			
NAFTA.....	256,186	284,902	312,788
Israel.....	5,973	6,497	8,094
Jordan.....	531	607	623
Singapore.....	17,850	18,680	21,911
Chile.....	3,236	4,668	6,221
Australia.....	-	14,638	16,836
Bahrain.....	-	-	471
Morocco.....	-	-	869
El Salvador, Guatemala, Honduras, Nicaragua.....	-	-	9,658
FTA partner total.....	283,776	329,992	377,471
World.....	727,183	803,992	929,486
FTA partner share of world.....	39	41	40.6
Imports:			
NAFTA.....	410,619	456,750	500,090
Israel.....	14,515	18,680	19,157
Jordan.....	1,093	1,267	1,421
Singapore.....	14,848	15,084	17,750
Chile.....	5,007	6,745	9,551
Australia.....	-	7,360	8,244
Bahrain.....	-	-	632
Morocco.....	-	-	546
El Salvador, Guatemala, Honduras, Nicaragua.....	-	-	10,207
FTA partner total.....	446,082	505,886	567,598
World.....	1,460,160	1,662,380	1,845,053
FTA partner share of world	30.6	30.4	30.8

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

JETRO Monthly Report

Balance:

NAFTA.....	-154,443	-171,848	-187,302
Israel.....	-8,542	-10,373	-11,063
Jordan.....	-562	-660	-798
Singapore.....	3,002	3,596	4,161
Chile.....	-1,771	-2,077	-3,330
Australia.....	-	7,278	8,592
Bahrain.....	-	-	-161
Morocco.....	-	-	323
El Salvador, Guatemala, Honduras, Nicaragua.....			-549
FTA partner total.....	<u>-162,306</u>	<u>-174,084</u>	<u>-190,127</u>
World.....	-732,977	-858,388	-915,567
FTA partner share of world.....	22.1	20.3	20.8

Source: US Department of Commerce; *Note:* Data represents total bilateral trade flows. "-" indicates not applicable because an FTA was not in force.

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

Cato Institute Explores State of US Manufacturing in Global Economy

Summary

On September 25, 2007, the Cato Institute hosted a panel discussion on the state of US manufacturing in a global economy. Speakers provided their views on the current state of US manufacturing and whether trade has affected US manufacturing trends. We review herein their discussion.

Analysis

The Cato Institute's panel discussion – titled “Thriving or Threatened? Perspectives on the State of US Manufacturing in a Global Economy” – included analysis from panelists on the relationship between US manufacturing and trade, and whether trade was harming US manufacturing.

- **Daniel Ikenson, Associate Director of the Center for Trade Policy Studies, Cato Institute** presented findings from his paper, “Thriving in a Global Economy: The Truth About US Manufacturing and Trade.”⁹ Ikenson stated that reports of “the death of US manufacturing” have been greatly exaggerated, although he noted that US legislators have repeatedly brought up the declining manufacturing sector and its job losses. According to Ikenson, the US manufacturing sector is performing well and he noted that in 2006, real US manufacturing output, revenues and operating profits reached an all-time high. Ikenson opined that the good performance of US manufacturing makes it difficult to make a serious case that the US manufacturing sector is in decline. In discussing the impact of trade on US manufacturing, Ikenson stated that exposure to trade has been an important component of the success of US manufacturing industries, and he noted that 2006 trade data shows that US manufacturing is not “under duress” from increasing imports. According to Ikenson, US manufacturing is in good health, and increasing international trade has a lot to do with that condition. Ikenson stated that the US manufacturing sector is thriving in a global economy and thus, US lawmakers should “back away from their hostile rhetoric about trade before they adopt policies that will damage the sector.”
- **Lloyd Wood from the American Manufacturing Trade Action Coalition (AMTAC)** stated that the US manufacturing sector is not performing nearly as well as other sectors in the US economy and he noted that although the US population and Gross Domestic Product (GSP) have increased, investment into US manufacturing has decreased. According to Wood, the US manufacturing sector

⁹ Daniel Ikenson. “Thriving in a Global Economy: The Truth About US Manufacturing and Trade.” Center for Trade Policy Studies, Cato Institute. August 28, 2007. <http://www.freetrade.org/node/737>

has grown slower in the past decade and manufacturing employment has decreased as a result. Wood also stated that the US demand for durable goods has increased but that US producers only supply 38 percent of this demand with the remainder covered by imports. Wood cited several reasons for the “anemic performance” of the US manufacturing sector, including: (i) foreign subsidies that undermine US manufacturing; and (ii) countries, such as China, that allegedly manipulate their currency, which in turn increases the US trade deficit. Wood called on Congress to approve trade legislation that addresses both these perceived problems.

- **Lewis Leibowitz from the Consuming Industries Trade Acton Coalition (CITAC)** stated that US manufacturing is performing well and that the US ability to export its manufactured products is hinged on its ability to import. He opined that the small decline in US manufacturing is attributed to increased competition abroad and increased US investment in high technology. He noted that US manufacturing continues to increase its output and he stated that the “crisis of US manufacturing in decline” is largely overblown. In discussing imports from China, Leibowitz stated that China’s exports to the rest of the world are growing faster than China’s exports to the United States; according to Leibowitz, complaints that increased imports from China put US manufacturing in decline are unfounded. Leibowitz noted that legislative bills meant to “remedy” the alleged decline in US manufacturing do not remedy the problem and do not balance all the interests involved.
- **Robert Scott from the Economic Policy Institute** stated that the US manufacturing sector is performing well but could be performing better. According to Scott, the overvalued US dollar is the cause of the decline in US manufacturing; Scott stated that an overvalued dollar makes imports artificially cheaper and makes US exports less competitive. Scott noted that trade data shows that whenever the US dollar increases in value, US exports decrease and imports increase. He indicated that the US share of world exports has decreased by 4 percent since 2000 (so that the US share of world exports is now estimated at 9 percent); according to Scott, this loss in the share of world exports is attributed to China. Since 2000, China’s share of world exports increased by 4 percent. He added that alleged currency manipulation in other countries – such as China – have added to the decline in US manufacturing.

Outlook

The decline in US manufacturing has recently become a hot topic in light of contradicting news reports that highlight either the US manufacturing sector’s steady growth or its job losses. On one hand, some economic analysts believe that the manufacturing sector is performing well; according to the Institute for Supply Management’s (ISM) manufacturing index, the United States’ manufacturing index is currently at

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

52.9. Under the ISM's manufacturing index, any figure over 50 shows that the manufacturing sector is expanding. However, many economic observers have blamed international trade flows for the hemorrhaging job losses in the US manufacturing sector, claiming that a change in US demand patterns for cheaper, foreign-made goods has led to a slump for US manufacturers. Added to this discussion are China's growing exports in the global economy and the US trade deficit with China. These elements form the central crux of the debate on US manufacturing and are often repeatedly brought up in the US Congress, where legislators have shifted some of their attention to international trade and its effects on different US sectors, such as manufacturing. US legislators have introduced several pieces of legislation meant to "remedy" the decline in US manufacturing, especially with regards to China, such as H.R. 2600 (a bill that authorizes the imposition of a tax on imports from any country that employs indirect taxes and grants rebates of the same upon export) or H.R. 2942 (a bill that extends US countervailing duties to products from non-market economies and attempts to address currency manipulation in other countries). Supporters of such legislation, such as AMTAC, believe that the bills will boost the US manufacturing industry and make it more competitive, whereas opponents of these bills, such as CITAC, believe that the bills will actually harm US manufacturing by limiting foreign imports that the manufacturing sector needs. Regardless, the debate on the state of US manufacturing is unlikely to fade away in the short-term and it is likely that legislators will continue to address the issue, especially with the 2008 Presidential campaign season swiftly approaching.

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

United States Highlights

House Approves Economic Sanctions Against Iran

On September 25, 2007, the House of Representatives approved legislation (H.R. 1400 – the Iran Counter-Proliferation Act of 2007) that tightens existing US sanctions against Iran. House members passed H.R. 1400 by a vote of 397 to 16. H.R. 1400 proposes the imposition of new economic sanctions against Iran and prohibits the Executive Branch from waiving current sanctions against foreign companies that invest in Iran's energy sector. House Foreign Affairs Committee Chairman Tom Lantos (D-CA) introduced H.R. 1400 in March 2007. H.R. 1400 has 325 co-sponsors. Specifically, the legislation would:

- expand the types of investment in Iran subject to sanctions;
- restrict exports of certain US products to Iran;
- re-impose a ban on imports from Iran that had been lifted under President Clinton's Administration;
- authorizes additional funds for the Treasury Department's Office of Terrorism and Financial Intelligence;
- prevent US subsidiaries of foreign companies that invest in Iran's oil sector from receiving US tax benefits for oil and gas exploration;
- strengthen the Iran Sanctions Act of 1996 by withdrawing the President's authority to waive sanctions required under the law against foreign companies investing in Iran's energy industry; and
- impose a prohibition on technical cooperation by US firms with countries that aid Iran in its nuclear development.

House approval of H.R. 1400 is the most recent action that US legislators have taken with regards to economic sanctions against Iran. On March 22, 2007, Sen. Gordon Smith (R-OR) introduced the Senate version of H.R. 1400- S. 970 (the Iran Counter-Proliferation Act of 2007). S. 970 has been referred to the Senate Committee on Finance and Congressional sources are uncertain when the Senate plans on voting on the legislation. To date, the Senate has not scheduled hearings or a vote on S. 970; until the Senate does that, the House will have to wait to further act on H.R. 1400.

H.R. 1400 and S. 970 are not the only bills that focus on Iran. Sen. Frank Lautenberg (D-NJ) introduced S. 1234 (the Stop Business with Terrorists Act of 2007) on April 26, 2007, which would impose US sanctions on foreign-domiciled companies doing business in Iran and both bills contain provisions similar to H.R. 1400. S. 1234 has been referred to the Senate Committee on Banking, Housing, and Urban

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

Affairs. On May 23, 2007, the House Financial Services Committee approved by voice vote the Iran Sanctions Enabling Act of 2007 (H.R. 2347). This legislation is intended to prevent investment in companies with investments of USD 20 million or more in Iran's energy sector. Chairman of the House Financial Services Committee Barney Frank (D-MA) and Rep. Lantos introduced H.R. 2347 on May 16, 2007. H.R. 2347 is undergoing review by several other House committees. Senator Barack Obama (D-IL) introduced a similar bill (S. 1430) in the Senate. That bill has been referred to the Senate Committee on Banking, Housing, and Urban Affairs.

Should the Senate approve S. 970 and bring it into conference with H.R. 1400, or in the event that Congress approves any of the aforementioned bills targeting Iran, then Congress will likely face a fight from the private sector. US business organizations have already voiced their opposition to bills imposing economic sanctions on Iran. The US Chamber of Commerce, the National Foreign Trade Council, The Business Roundtable, the Coalition for Employment Through Exports, the Emergency Committee for American Trade, the National Association of Manufacturers, the National US-Arab Chamber of Commerce, the Organization for International Investment, the US Council for International Business, and USA*Engage have all voiced opposition to legislation that dissuades US businesses from investing in Iran, such as S. 970 and S. 1234.

Agriculture Secretary Johanns Resigns; President Bush Names Deputy Secretary as Acting Secretary of Agriculture

On September 19, 2007, Secretary of Agriculture Mike Johanns announced his resignation and indicated that he plans to run for Senator of Nebraska in 2008 and succeed the retiring Sen. Chuck Hagel (R-NE). Johanns notified President Bush of his decision, and President Bush accepted the resignation on September 20. President Bush named Deputy Agriculture Secretary Chuck Conner to serve as acting Agriculture Secretary. Johanns is expected to announce his run in the Nebraska Senate race over the next several days.

Following President Bush's announcement on Johanns' replacement, Acting Agriculture Secretary Chuck Conner stated that he expects "a seamless transition" following his predecessor's resignation because Johanns involved him in all key decisions since both officials arrived to the Department of Agriculture in 2005. Administration officials echoed Conner's statements, noting that Conner has been immersed in the 2007 Farm Bill debate. Prior to his work at the Department of Agriculture, Conner served as staff director of the Senate Agriculture Committee from 1995-1997. In 2001, Conner served as a special assistant for agricultural trade and food assistance to work with Congress on drafting the 2002 Farm Bill. Conner took over as Deputy Agriculture Secretary in 2005.

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

Conner indicated that he has not discussed with White House officials whether he would be nominated for the permanent post, but government sources report that Conner, a former aide to Sen. Richard Lugar (R-IN) and one-time Senate Agriculture Committee staff director, is highly regarded on Capitol Hill for his technical expertise and ability to forge compromise. Senate Agriculture Committee Chairman Tom Harkin (D-IA), for example, stated that Conner was a "good choice" to replace Johanns, and that Conner's involvement in the 2007 Farm Bill process will make for a smooth transition. House Agriculture Committee Chairman Collin Peterson (D-MN) opined that Conner "has been running the show behind the scenes on the Department of Agriculture's Farm Bill agenda, so not much will change now that he's been named acting secretary." Some Congressional sources noted, however, that Republican Senators from southern states might not support Conner's nomination because Conner has defended the provision in the Bush Administration's proposed farm bill that would cut all farm subsidies to farmers with incomes over USD 200,000.

Citing Conner's close work with Johanns and his involvement in 2002 Farm Bill, analysts opine that Johanns' departure from the Department of Agriculture is unlikely to have much impact on the 2007 Farm Bill debate in Congress. The 2002 Farm Bill is scheduled to expire on September 30, 2007, and Congress is considering the 2007 version of the agricultural bill. On July 27, 2007, the House of Representatives approved the Farm Bill Extension Act of 2007 (H.R. 2419) by a margin of 231 to 191. H.R. 2419 would, with few exceptions, extend the 2002 Farm Bill through 2012 by authorizing USD 286 billion for farm subsidies, conservation, nutrition, rural development and energy programs. The Senate is considering its version of the Farm Bill, and Senators likely will begin marking up and analyzing the 2007 Farm Bill over the next several weeks.

House Approves Legislation on International Trade and US Small Businesses

On September 4, 2007, the House of Representatives by voice vote unanimously passed the Small Business Administration Trade Program Act of 2007 (H.R. 2992), a bill to support international trade by small businesses located in the United States. H.R. 2992 mandates the Small Business Administration's Office of International Trade (OIT) to develop trade policies to support small businesses in domestic and foreign markets and to implement them through relationships developed with federal trade policymakers, like the United States Trade Representative, and transnational organizations, such as the Organization for Economic Co-operation and Development (OECD). The bill also includes a provision for OIT to design an "Annual Trade Strategy" each fiscal year aimed at increasing small business access to domestic and international markets. The strategy should be in the form of a report and include the following

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

components: (i) strategies to increase exports, including priority markets and industries; (ii) plans to increase the competitiveness of domestic small business industries in the global economy; (iii) plans to protect small businesses from unfair trade practices, including intellectual property violations and dumping; (iv) strategies to expand small business representation in US trade policy formation and implementation; and (v) coordination efforts with other trade related Federal agencies, such as the Overseas Private Investment Corporation (OPIC) and the US Export-Import Bank. The bill would also require OIT to create a system for tracking exports and federal trade promotion resources for small businesses as well as to provide technical assistance to small businesses involved in trade remedy investigations or prosecuting trade dispute cases and to increase export assistance. H.R. 2992 also seeks to increase the number of financial specialists at export assistance centers.

Rep. John Hall (D-NY) introduced H.R. 2992 on July 11, 2007. Similar provisions to H.R. 2992 are included in the Senate's Entrepreneurial Development Act of 2007 (S. 1671); the Senate bill differs from the House bill in that it also contains entrepreneurship development programs covering women and Native American business development programs. The Senate bill also addresses small business health insurance and state and federal regulatory compliance issues. S. 1671 also establishes a SBA associate administrator for international trade within the OIT whose goals would include establishing annual OIT goals, facilitating technology transfer, increasing access to capital, and ensuring small business interests are represented in trade negotiations.

The Senate Small Business Committee approved S. 1671 in June. Congressional sources opine that the Senate could consider S. 1671 before the end of 2007, although they did not give a specific timeframe. If the Senate approves S. 1671, members of Congress will consider the Senate bill and H.R. 2992 in conference to reconcile the two pieces of legislation.

Supporters of the bill lauded House passage of H.R. 2992. President of the National Small Business Exporters Association James Morrison stated that the bill is an important step forward for small business "to be better able to have a voice in trade talks." According to the Congressional Budget Office, implementation of H.R. 2992 would cost the government USD 2 million in 2008 and USD 19 million from 2008 to 2012.

United States and Israel Form High Technology Forum

On September 6, 2007, the US Department of Commerce's Bureau of Industry and Security (BIS) announced that the United States and Israel have agreed to launch the US-Israel High Technology Forum (HTF), an Under Secretary-level bilateral dialogue whose purpose is to facilitate and enhance secure high

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

technology trade and investment between the two countries. In announcing the formation of the HTF, Under Secretary of Commerce for Industry and Security Mario Mancuso stated that the HTF "will accelerate, elevate and institutionalize a senior-level dialogue to address bilateral high technology trade, investment, and related security issues within the context of our larger strategic relationship."

Under Secretary Mancuso had proposed the idea of the HTF to senior officials at the Israeli Ministry of Defense, Ministry of Foreign Affairs, and the Ministry of Industry, Trade and Labor during an August 27-30, 2007, visit to Israel. In announcing the HTF, Mancuso remarked that the forum will advance "shared security and economic interests." He noted that Israel has made significant progress in implementing a comprehensive export control regime, and that the United States will work with the Israeli government in further implementing and enforcing its export control laws. According to Mancuso, the HTF will also involve staff-level discussions between the two governments, the first of which will occur in early 2008.

Mancuso noted that the HTF initiative is part of a larger effort by BIS to accelerate US engagement with the world's most dynamic technology markets. Although he declined to identify any other countries that BIS is analyzing, he noted that BIS is "actively evaluating key markets around the world with which [the United States] can accelerate and elevate [US] technology engagement" and that the countries under consideration for the BIS initiative would be attractive because of their "inherent size, unique nature, or dynamism."

President Bush Nominates Padilla For Undersecretary on International Trade

On September 4, 2007, President Bush nominated current Department of Commerce (DOC) Assistant Secretary for Export Administration Christopher Padilla to be the new Undersecretary of Commerce for International Trade. Once confirmed by the Senate, Padilla would replace former Undersecretary of Commerce for International Trade Franklin Lavin, who left DOC in mid-July to become Managing Director and Chief Operating Officer of Cushman & Wakefield Investors Asia.

The Senate confirmed Padilla as Assistant Secretary for Export Administration in September 2006. Prior to joining DOC, Padilla served as Chief of Staff and Senior Advisor to Deputy Secretary of State Robert Zoellick in the Department of State. Padilla joined the Bush Administration in 2002 as Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison. Prior to his work in the government, he worked in a number of international positions at AT&T and Lucent Technologies, including marketing, business development, and government affairs. He has also served as Director of International Trade Relations at Eastman Kodak Company.

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

USTR Seeks Comments on Annual NTE Report on Trade Barriers

On August 29, 2007, the Office of the United States Trade Representative's (USTR) Trade Policy Staff Committee (TPSC) requested public comment on USTR's annual National Trade Estimate Report (NTE) on Foreign Trade Barriers. The NTE lists US trading partners' significant trade barriers and is an indicator of the United States' future market access priorities. In the Federal Register notice, USTR requested that all interested parties submit comments on any practices that may violate US trade agreements, as well as any new or updated information regarding barriers covered in previous reports.

According to USTR, the information should relate to one of ten categories of trade barriers: (i) import policies; (ii) standards, testing, labeling, and certification; (iii) government procurement; (iv) export subsidies; (v) lack of intellectual property protection; (vi) services barriers; (vii) investment barriers; (viii) anti-competitive practices with trade effects tolerated by foreign governments; (ix) trade restrictions affecting electronic commerce; and (x) other barriers.

Interested parties should submit their comments via email by November 8, 2007 to: FR0717@ustr.eop.gov. Parties can also submit comments via facsimile and should send them to Gloria Blue, executive secretary, TPSC, at (202) 395-6143. Comments are not to exceed 20 pages.

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

Free Trade Agreements

CAF XI Conferees: US Congress Must Approve US-Latin American FTAs Soon

Summary

On September 4-5, 2007, the Corporacion Andina de Fomento (CAF), the Organization of American States (OAS), and the Inter-American Dialogue hosted the CAF XI Annual Conference on Trade and Investment in the Americas. The conference addressed US-Latin America relations, current investment trends in Latin America, and prospects for passage of the US-Peru, US-Panama, and US-Colombia Free Trade Agreements (FTAs). Speakers included, among others, Deputy United States Trade Representative (DUSTR) John Veroneau, Rep. Nita Lowey (D-NY), Rep. Xavier Becerra (D-CA), Rep. Henry Cuellar (D-TX), and Secretary General of the OAS Jose Manuel Insulza.

We review here the key points raised by US trade and Andean representatives, and by Members of Congress on September 5, 2007 at the CAF event.

Analysis

Regarding passage of US-Latin American FTAs, Andean and US trade representatives called on the US Congress to approve these pending FTAs by the end of 2007. Members of Congress, however, called on the Bush Administration to “uphold” the inclusion of environmental and labor protections in these FTAs in conformity with the Bipartisan Agreement on Trade Policy concluded in May 2007. We summarize below the speakers' views:

- **Enrique Garcia, President of CAF**, stated that Latin American countries succeeded at maintaining macroeconomic stability in 2006 but now must strive to improve the microeconomic foundation of their economies. Garcia predicted a positive economic outlook for Latin America in 2007 but stressed that the region continues to show weaknesses at the microeconomic level, notably in terms of efficiency, competitiveness and income distribution. Garcia stressed the need to strengthen US-Latin America relations amid the recent loss of US interest in the region. He opined that the United States must renew its agenda in Latin America because the region continues to be important in economic and strategic terms. Garcia called on the Bush Administration to press the US Congress for passage of the US-Latin American FTAs.

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

- **Jose Manuel Insulza, Secretary General of the OAS**, opined that the United States does care about Latin America: “Although there is a general perception in Latin America that the United does not pay enough attention to the region, this perception is often misunderstood.” According to Insulza, the problem underlying US-Latin America relations is not an issue of attention or agenda, rather it is the lack of common policies in many areas (such as trade and security) that do not encourage cooperation. He stated that trade and investment are both at the top of the US agenda for the Western Hemisphere, but security must also be a priority as the issue is “getting out of hand” in the region with the proliferation of drug trade, human trafficking, and crime.
- **Rep. Nita Lowey (D-NY), Chairman of the House Appropriations Subcommittee on State, Foreign Operations, and Related Programs**, stated that there is a steady decline of a favorable opinion of the United States in Latin America, which has coincided with the so-called “switch to the left” and a decline in US involvement and assistance to the region. Lowey called on the Bush Administration to develop a comprehensive agenda for Latin America that goes beyond trade and investment, but also targets poverty reduction, social inequalities, income distribution, and judicial system reform. Rep. Lowey was critical of recent US-Latin American FTAs, which in her view have not been beneficial to those sectors of Latin American societies that need the most support. She praised the May 2007 Bipartisan Agreement reached between the Administration and Congress but did not provide a forecast as to when and whether Congress will consider pending US-Latin American FTAs.
- **Rep. Xavier Becerra (D-CA), Member of the House Ways and Means Committee and Subcommittee on Trade**, was critical of Latin America’s recent shift to the left and the declining positive perceptions of the United States in Latin America. He stated that all Latin American countries that have politically shifted to the left have moved into the “wrong direction” in failing to follow the US lead. He opined that the United States must negotiate FTAs “that treat people like products” because current FTAs do not sufficiently address minimal standards on labor and environment. Rep. Becerra was optimistic about Congressional passage of the US-Panama and the US-Peru FTAs but rather pessimistic about the US-Colombia FTA, stating that the US-Colombia FTA “would be considered in the future.”
- **Rep. Henry Cuellar (D-TX), Member of the House Homeland Security and Agriculture Committees**, stated that the Bush Administration should focus on six areas in Latin America: (i) trade; (ii) natural resources; (iii) finance; (iv) security; (v) energy; and (vi) immigration. Rep. Cuellar was optimistic about passage of the pending US-Latin American FTAs and expressed hope that the

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

US Congress would consider them soon. He stated that these FTAs are key to support strong and prosperous Latin American neighbors, but added that they must also uphold labor and environmental standards. Rep. Cuellar stated that the US-Peru FTA would be the first agreement that Members of Congress would consider. On Colombia, Cuellar praised President Alvaro Uribe's efforts to provide security to labor union leaders and sustain democratic values, but he said that "there was no time to consider the Colombian agreement given the number of pending issues in Congress."

- **DUSTR John Veroneau** disagreed with Rep. Becerra's views on Latin America's switch to the left and stated that although several Latin American countries have switched to the political left, some countries, like Brazil, Chile, and Uruguay, "are moving into the right direction." DUSTR Veroneau praised the May 2007 Bipartisan Agreement on Trade Policy, stating that it was crucial to secure future passage of pending US-Latin American FTAs. He reiterated the Administration's support for high standards on environment and labor in these FTAs and was overall positive about their approval during this Administration. He stated that the US Congress will begin consideration of the US-Peru FTA, and then the US-Panama and US-Colombia FTAs "must follow suit." DUSTR Veroneau stated that what is at stake with these FTAs is an opportunity to "lock in" structural reforms that Peru, Panama, and Colombia are in the process of implementing. He also noted that beyond providing market access preferences, these FTAs will assist countries to continue to implement structural reforms and improve transparency and the rule of law. DUSTR Veroneau opined that in order for countries to take advantage of negotiated FTAs, they must implement reforms: "The fate of these countries will depend on what they do within their borders" in terms of improving infrastructure, creating jobs, and providing border security. DUSTR Veroneau called on Latin American governments to bring more people into the formal economy so that their economies can grow and so that legitimacy improves.

Outlook

With regards to US-Latin America relations, most speakers agreed that although Latin America is not a priority for the Bush Administration, the region continues to be a key trade and investment partner for the United States. Andean and Latin American trade representatives called on the US Congress to approve pending US-Latin American FTAs as soon as possible. Although Administration officials at the CAF conference were positive about approval of pending FTAs, US lawmakers were extremely cautious in providing a specific timeframe for Congressional consideration and approval.

The US-Latin America FTAs are likely to face intense opposition in Congress due mainly to partisan differences and electoral politics. The Senate Finance Committee will hold a hearing to analyze the US-

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

Peru FTA on September 11, 2007, but it remains unclear when Congress will consider and vote on the Peruvian agreement. Congressional sources have predicted that the US Congress will likely consider the US-Peru FTA first, followed by the US-Panama FTA. The chances for consideration of the US-Colombia FTA in the near-term, however, appear very weak mainly due to a busy Congressional Fall agenda and fierce Democratic opposition to the agreement. The US Congress is currently focused on appropriations and the 2007 US Farm Bill, on top of the Peru and Panama agreements; that schedule combined with Democratic concerns over human rights and labor issues in Colombia could push consideration of the Colombian agreement to 2008. Congressional consideration of the US-Peru FTA should provide a better picture of when Congress will vote on the US-Panama and US-Colombia FTAs. Congressional sources, however, opine that the Colombian agreement suffers from a lower likelihood of passage than the other two agreements.

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

Special Report: US-Peru FTA Moves Forward in Congress as US, Peruvian Officials Meet to Discuss Bilateral Agreement

Summary

There have been several developments in the US Congress regarding the US-Peru Trade Promotion Agreement (PTPA) in September 2007. This report reviews the following developments:

- On September 25, 2007, the House Ways and Means Committee held a mock mark-up of the implementing legislation of the PTPA; the Senate Finance Committee held its mock mark-up on September 20, 2007. We review below the mark-ups and the discussion between Committee members.
- Prior to its mock mark-up, on September 11, 2007, the Senate Finance Committee held a hearing on the 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://www.senate.gov/~finance/sitepages/hearing091107.htm>.
- Separately, US and Peruvian officials scheduled visits to Peru and Washington respectively to discuss the PTPA. On September 6, 2007, Peruvian officials met with members of the US Congress to discuss implementation of the FTA. US Secretary of Commerce Carlos Gutierrez led a large, bipartisan Congressional delegation to Panama, Peru, and Colombia the week of September 10 to discuss with government, business, labor, and civil society representatives the pending US Free Trade Agreements (FTAs) with the three Latin American countries and the impact of these FTAs on the United States.

Analysis

I. House Ways and Means and Senate Finance Committees Hold Mock Mark-Ups of PTPA

On September 25, 2007, the House Ways and Means Committee held a mock mark-up of the implementing legislation of the PTPA. At the mark-up, Committee members did not consider any amendments to the agreement; the Committee unanimously approved the PTPA. House Ways and Means Committee Chairman Charles Rangel (D-NY) lauded the mark-up and urged members of Congress to quickly approve the PTPA once the Administration submits formal implementing legislation to Congress. House Ways and Means Trade Subcommittee Chairman Sander Levin (D-MI) opined that the PTPA is helping Congress reshape American trade policy.

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

On September 20, 2007, the Senate Finance Committee held its mock mark-up of the implementing legislation of the PTPA and informally approved the bilateral agreement by a margin of 18 to 3. In the nonbinding mock mark-up, the Committee approved the PTPA without amendments. During the mock mark-up, Sens. Orrin Hatch (R-UT), Jon Kyl (R-AZ), and Debbie Stabenow (D-MI) voted against the PTPA. Sen. Hatch introduced several amendments to the agreement that the Committee defeated. The Committee rejected Sen. Hatch's first amendment on a vote of 5 ayes to 15 nays; the amendment would have clarified that it is the intent of the Committee that Peru adopt intellectual property protections similar to those in the United States. Finance Committee Chairman Max Baucus (D-MT) stated that the amendment was unnecessary. The Committee rejected Sen. Hatch's second amendment on a vote of 4 ayes to 16 nays; this amendment would have provided a safe harbor for US federal and state labor laws. Sen. Hatch argued that the labor provisions of the US-Peru FTA put US labor laws at risk, without a safe harbor, from dispute settlement panels. Senate Finance Ranking Member Charles Grassley (R-IA) opined that there was nothing in the PTPA that would require changes in US federal or state labor laws.

II. Senate Finance Committee Hearing

On September 11, 2007, the Senate Finance Committee held a hearing on the PTPA. The hearing included **on-the-record** oral testimony from government and business representatives.

- **Senator Max Baucus (D-MT), Chairman of the Senate Finance Committee**, stated that the PTPA includes meaningful and fully enforceable labor and environmental protections. According to Sen. Baucus, for the first time in any FTA, the PTPA requires the Parties to implement the five core International Labor Organization (ILO) standards. These standards will ensure that Peruvian workers have the right to organize. Sen. Baucus also noted that the PTPA also requires the Parties to implement seven core environmental treaties. Sen. Baucus stated that the PTPA makes these labor and environmental provisions fully enforceable and subject to the same dispute settlement mechanism that applies to all other obligations within the agreement; according to Sen. Baucus, this mechanism will ensure that the labor and environmental provisions are not “merely paper tigers . . . [and that] they have real teeth.” Sen. Baucus opined that the PTPA's provisions on labor and the environment benefit workers and encourage environmentally sustainable development.
- **Senator Charles Grassley (R-IA), Ranking Member of the Senate Finance Committee**, opined that the PTPA is a strong trade agreement and that implementation of the agreement will provide substantial benefits for US and Peruvian farmers, manufacturers, and service providers. Sen. Grassley cited American Farm Bureau Federation figures that indicate that US farm exports could increase by over USD 705 million each year under the agreement; he also cited US International

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

Trade Commission estimates that the agreement will lead to a 25 percent increase in US exports to Peru. Sen. Grassley also noted that Peru's government has demonstrated its commitment to market liberalization and to strengthening its relationship with the United States, a "stark contrast to other countries in the region," such as the economies of Venezuela, Ecuador, and Bolivia, that are "consolidating political power, expropriating industries or otherwise disregarding investor rights, and distancing themselves from the United States." Sen. Grassley noted that failure to implement the PTPA would send the wrong signal and would disillusion the Peruvian people as well as empower leaders like Venezuela President General Hugo Chavez who are antagonistic to the United States. Sen. Grassley called on the Congress to implement the PTPA as soon as possible.

- **Michael Kantor, Partner, Mayer Brown; former United States Trade Representative**, stated that the PTPA is the kind of trade agreement that is "worthy of the support of Congress and the American people," and he noted that the PTPA is a comprehensive agreement that will provide economic benefits to both the United States and Peru. He noted that tariffs on goods and agriculture products will be eliminated on both sides and that the bilateral agreement provides access to government procurements, has realistic protection for intellectual property, and contains necessary protections for investments. Kantor also stated that the PTPA will help to strengthen freedom and democracy in Peru and will broaden and deepen ties between the United States and Peru. According to Kantor, what helps distinguish the PTPA from other past US FTAs is the inclusion of strong and enforceable provisions on labor and the environment. Kantor noted that the recent commitment by the leadership of the Peruvian government has helped to ensure that these provisions will be real and have a solid impact.
- **Thea Lee, Policy Director and Chief International Economist at the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)**, signaled that the AFL-CIO will not mount a large-scale effort against the PTPA and she noted that changes to the agreement's labor provisions made "significant progress in crucial areas." She called, however, for further changes in labor, government procurement and services in future US FTAs. Lee noted that the AFL-CIO will not be advocating for passage of the PTPA because the agreement "falls short" in certain provisions, particularly with respect to investment, other procurement issues, and services. She added, however, that the AFL-CIO's priority is opposing the Colombia and Korea agreements.
- **David Winkles, Jr., President of the South Carolina Farm Bureau**, and speaking **on behalf of the American Farm Bureau Federation**, stated that under the PTPA, more than two-thirds of current US agricultural exports to Peru will become duty-free immediately, including items such as high-quality

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

beef, cotton, wheat, soybeans, soybean meal, apples, pears, cherries, almonds, and some processed food products. Winkles also noted that the agreement not only eliminates the lower applied tariffs currently applied to agricultural imports from the United States, but also the higher bound tariffs allowed by the World Trade Organization. According to Winkles, Peru currently uses sanitary and phytosanitary restrictions to limit or prohibit certain US agricultural products; he noted, however, that the PTPA addresses these concerns and establishes that US products that meet US domestic standards are sufficient to meet Peruvian standards. He noted that the PTPA is positive for US agriculture and the total increase in US farm exports associated with the PTPA could exceed USD 705 million per year after full implementation of the agreement. Winkles called on Congress to quickly pass the PTPA as well as the Colombia and Panama FTAs.

III. Peruvian Delegation Visits Members of Congress

Prior to the Senate Finance Committee hearing, on September 6, 2007, Peruvian Labor Minister Susana Pinilla Cisneros met with House Ways and Means Trade Subcommittee Chairman Levin to discuss Peru's supreme decrees on labor and any concerns Rep. Levin might have with the process of strengthening the Peruvian labor code. Cisneros also met with House Ways and Means Committee Chairman Rangel on September 7 to discuss the PTPA. At the meetings, Cisneros discussed President Garcia's implementation of supreme decrees that cover five areas: time-limited contracts, subcontracting, the right to strike, anti-union discrimination, and safeguarding the right to strike. Cisneros stated that Peru is not implementing the decrees in an effort to meet US demands on labor in order to secure FTA passage but rather is issuing the supreme decrees "because of its own interest in doing so."

Cisneros also discussed the August 15 earthquake that took place in Peru and how the natural disaster forced the Peruvian government to divert resources away from dealing with labor issues necessary to secure passage of the PTPA in order to deal with the aftermath of the earthquake. She assured Reps. Rangel and Levin that over the course of the next several weeks, the Peruvian legislature would focus on the passage of labor decrees that protect worker rights.

IV. Congressional Delegation Visits Panama, Peru and Colombia

US Secretary of Commerce Carlos Gutierrez led a bipartisan congressional delegation to Panama, Peru, and Colombia September 12-15, 2007, to discuss with government, business, labor, and civil society representatives the pending US-Latin American FTAs. The delegation met with Panamanian President Martin Torrijos, Peruvian President Alan Garcia, and Colombian President Alvaro Uribe. Secretary

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

Gutierrez and his delegation also met with American Chamber of Commerce members in all three countries.

The delegation began its trip in Panama where members met with businesses and workers to discuss how the agreement will expand and create economic growth opportunities. On September 14, the delegation traveled to Peru, where Secretary Gutierrez and the delegation spoke with the business community, local labor leaders, students, and workers about economic and employment conditions in Peru and the effects they expect to see from the PTPA. The delegation concluded its trip in Colombia on September 15, where Secretary Gutierrez and the delegation met with members of the Council of American Companies as well as officials from the Uribe Administration to discuss Colombia's plans for economic social change and reduction in the level of violence in Colombia.

The delegation included Reps. Rodney Alexander (R-LA), Joseph Crowley (D-NY), Lincoln Diaz-Balart (R-FL), David Dreier (R-CA), Dennis Hastert (R-IL), Wally Herger (R-CA), Ruben Hinojosa (D-TX), Jim McCrery (R-LA), Greg Meeks (D-NY), and Cliff Stearns (R-FL). The delegation also included Senator Bob Bennett (R-UT) and Boston Mayor Thomas Menino.

Outlook

The House Ways and Means and Senate Finance Committee mock mark-ups as well as the Peruvian and US delegation visits indicate that the PTPA is moving forward through the US Congress. Peru's implementation of supreme labor decrees brings it a step closer to securing Democratic support for the agreement. The US delegation visit to Peru indicates that US trade officials are keen to garner support from the private sector for passage of the PTPA. On September 7, 2007, House Majority Leader Steny Hoyer (D-MD) stated that he expects Congress to vote on the PTPA in mid-October. Given that the House Ways and Means and Senate Finance Committees informally approved the agreement without any amendments, it seems likely that Congress will consider the PTPA before the end of 2007, likely in October. The PTPA may actually be the only FTA that Congress considers and approves in 2007; consideration of the Panama, Colombia and Korea agreements is likely to be pushed into 2008.

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

Free Trade Agreements Highlights

ITC Issues Report on Economic and Sectoral Impact of KORUS FTA

On September 20, 2007, the US International Trade Commission (ITC) issued the "US-Korea Free Trade Agreement: Potential Economy-wide and Selected Sectoral Effects." The report considers the FTA's likely impact on the US economy including its effects on output, trade, employment, individual industries, and US consumers' interests. The report also summarizes the agreement's specific provisions and any changes to US or Korean tariffs in certain sectors under the agreement.

In the report, the ITC estimates that upon full implementation, the FTA would generate a USD 11.9 to 10.1 billion increase in US gross domestic product (GDP). US goods exports to Korea would likely increase by USD 10.9 to 9.7 billion under the agreement, with the highest dollar value gains concentrated in machinery and equipment, chemicals, rubber and plastics, and beef and other meat products. US imports of Korean goods would likely grow by approximately USD 6.9 to 6.4 billion, with the highest value gains concentrated in textiles, motor vehicles and parts, and wearing apparel. The ITC estimates that the agreement will have a "small to negligible" impact on most US domestic sectors' output and employment; however, the report notes that expected losses in sectors such as textiles, wheat, wearing apparel and electronic equipment will likely be offset by gains in other sectors such as beef and other meat products. Regarding bilateral trade in services, the report estimates that the FTA will likely yield larger gains to US services exporters given that many of Korea's commitments under the agreement exceed its concessions under the General Agreement on Trade in Services (GATS). Specifically, the ITC predicts short-term gains to US financial and telecommunications services providers and medium to long-term gains to professional and audiovisual services providers. The report forecasts limited growth of US imports of Korean services given the relative openness of the US services market prior to the agreement's implementation. The ITC report also considers the FTA's impact on trade facilitation and regulatory reform. It notes that the agreement's trade facilitation and customs provisions would likely benefit US exporters through reduced transaction costs and an enhanced investment environment and that the agreement's bilateral standing committee on sanitary and phytosanitary (SPS) issues will likely impact a large number of products. The ITC expects the agreement's regulatory provisions to increase the security and stability of US investments in Korea and to improve transparency and due-process procedures related to competition policy.

The Trade Act of 2002 requires the ITC to prepare a report that assesses the likely impact of proposed FTAs on the US economy as a whole and on specific industry sectors and the interests of US consumers.

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

In preparing its assessment, the ITC also is required to review available economic assessments regarding the agreement in question, including literature regarding any substantially equivalent proposed agreement.

ITC Releases Assessment Report on US-Panama FTA

On September 11, 2007, the US ITC released its report assessing the United States-Panama Trade Promotion Agreement (TPA). The ITC's report, "US-Panama Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects", provides an assessment of the likely impact of the Panama TPA on the US economy and on specific industry sectors and consumers. The report also offers a comprehensive summary of all of the specific provisions in the agreement, as well as the changes to US and Panamanian tariffs in selected sectors as provided for in the new agreement.

The report concludes that the overall effect of the US-Panama FTA on the US economy would likely be small, particularly because of the small size of the Panamanian market compared to total US trade and production. According to the report, US exports to Panama are expected to increase whereas US imports from Panama are not likely to grow significantly because most Panamanian products already enter the United States duty-free. In its report, the ITC also stated that the FTA's provisions on services trade would provide US firms levels of market access, national treatment, and regulatory transparency exceeding those obtained by Panama's commitments under the General Agreement on Trade in Services (GATS). The ITC also analyzed the impact of both immediate and phased in elimination of tariffs for specific US product sectors, including certain processed foods, grain (corn and rice), meat (beef, pork, poultry), sugar and sugar-containing products, frozen potato products, passenger cars and light trucks, and certain machinery. The ITC concluded that for most of these sectors, the FTA would provide "small but positive benefits for US exports." The report also states that the FTA could increase trade and investment between the United State and Panama through trade facilitation, an improved regulatory environment, and increased regulatory transparency.

Korean Government Submits KORUS FTA to National Assembly for Consideration

On September 7, 2007, the Korean government announced that it had submitted the text of the Korea-US (KORUS) Free Trade Agreement (FTA) to the National Assembly for approval. Although the legislative body is expected to begin consideration of the FTA in mid-September, it remains unclear when or if it will approve the agreement. The FTA enjoys strong, high-level support within President Roh Moo-hyun's Administration but faces strong opposition from a number of Korea's legislators. Following the agreement's submission to the assembly, Prime Minister Han Duk-soo called on the body to quickly

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

approve it and offered to have cabinet members participate in discussions on the agreement to clarify points as necessary. Despite the government's support, however, nearly a quarter of National Assembly members oppose the agreement and will seek to block its passage, according to Korean press reports. Many of these lawmakers have already indicated that they will submit a request for the National Assembly to examine the agreement's negotiation process and its potential effects on Korea's future trade policy. The agreement faces particular opposition from Korean agriculture and labor groups and lawmakers who support these groups' causes. Presidential elections scheduled for December 2007 increase the likelihood that the assembly's consideration of the agreement will be contentious and could extend into 2008. To pass, the agreement must receive a simple majority, with at least half of the National Assembly's members present during the vote. Prior to a full vote, the agreement must undergo consideration by the Unification, Foreign Affairs and Trade Committee.

The United States must also approve the agreement before it can enter into force. The Bush Administration has not announced a date on which it plans to submit the FTA to Congress for approval; however, it will likely wait until late 2007 or early 2008, after Congress has voted on three pending FTAs. In practice, Congress generally considers trade agreements in the order in which it receives them from the Administration and must therefore first take up FTAs with Peru, Colombia, and Panama (in that order) before considering the Korea agreement. The Senate Finance Committee held a hearing on the Peru agreement on September 11 and will likely hold a "mock markup" of the agreement in October. The House Financial Services Committee has not yet announced a planned date for a hearing on the Peru agreement. Neither chamber of Congress has scheduled hearings for any other pending agreements. Following hearings, Congress must also hold non-binding "mock markups" of the agreements before the Administration can submit the final texts of the agreements for approval. Congress then has a maximum of ninety legislative days to vote on the agreement.

The National Assembly's approval of the KORUS FTA would likely help the agreement's chances of approval in Congress, where it faces growing opposition among Democratic members. Many Democrats have criticized the agreement for its alleged failure to address Korea's non-tariff barriers to trade in manufactured products—automobiles in particular. Citing this reason, House Democratic leaders including Speaker Nancy Pelosi (D-CA), Majority Leader Steny Hoyer (D-MD), Ways and Means Committee Chairman Charles Rangel (D-NY) and Trade Subcommittee Chairman Sander Levin (D-MI) issued a June 29 public statement indicating that they "cannot support the [FTA] as currently negotiated." Congressional Democrats had earlier voiced opposition to the agreement's environmental and labor provisions, which USTR and Korean counterparts renegotiated just before the agreement's signing.

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

JETRO Monthly Report

Other members of Congress, from both parties, have stated their refusal to support the agreement until and unless Korea reopens fully its market to US beef imports. Korea has maintained a full or partial ban on US beef since 2003, when a cow in the United States tested positive for Bovine Spongiform Encephalopathy (BSE). Korea currently bans bone-in beef and beef from cows older than 30 months of age; however, it has indicated that it could reopen its market by the end of September, provided that the United States does not accidentally ship any more beef products containing spinal or other risk materials. In July, Korean inspectors discovered a shipment of US beef that contained a cow's vertebral column, banned under a January 2006 agreement on beef between the United States and Korea.

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

Customs

Customs Highlights

Ports in Panama, Colombia, Israel Become Operational Under CSI Program

On September 13, 2007, the United States Customs and Border Protection (CBP) announced that the Colombian port of Cartagena became the 53rd operational port to implement the Container Security Initiative (CSI). Under the program, all maritime cargo destined for the United States through the Colombian Port of Cartagena will be pre-screened for terrorists and terrorist weapons. Under CSI, officers from both CBP and the Department of Immigration and Customs Enforcement (ICE) are stationed at key seaports abroad to work with host governments to identify high-risk shipments bound for the United States and to examine these shipments prior to loading. US Ambassador William Brownfield attended the ceremony at the port along with officials from the US Department of Energy's National Nuclear Security Administration (NNSA). Under its Megaports Initiative, NNSA is providing specialized equipment to the Port of Cartagena that will indicate the presence of special nuclear and other radioactive materials in containerized cargo, thereby enhancing Colombia's capability to deter, detect and interdict illicit shipments of nuclear and other radioactive materials at its ports.

Separately, on September 17, 2007, CBP Commissioner W. Ralph Basham announced that the Port of Ashod in Israel became the 54th port to implement the CSI. Like Cartagena, all maritime cargo destined for the United States through the Israeli Port of Ashod will be pre-screened for terrorists and terrorist weapons. In making the announcement, Basham stated that securing global trade is a major priority for CBP and that CBP is committed to using high-tech equipment and more secure containers to safeguard the supply chain, adding that "cooperation from our friends around the globe is our most potent weapon."

Cartagena and Ashod are the latest ports to be added to the CSI program. On August 27, 2007, Commissioner Basham announced that the Port of Balboa in Panama became the 52nd port to implement the CSI. The Port of Balboa is one of three ports in Panama scheduled to become operational in 2007. The Panamanian ports of Colon and Manzanillo are projected to become operational during the fall of 2007.

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

Multilateral

WTO Panel Issues Decision in US-Turkey Rice Dispute

Summary

On September 21, 2007, the World Trade Organization (WTO) released the WTO Panel's ruling in *Turkey — Measures Affecting the Importation of Rice* (DS334). The WTO Panel ruled that Turkey's import restrictions on rice violate Turkey's obligations under the WTO Agreement on Agriculture and the General Agreement on Tariffs and Trade (GATT) 1994. We review herein the Panel decision.

Analysis

I. Background

Anyone wishing to import rice into Turkey at the MFN tariff rate must first obtain a "Certificate of Control" from the Turkish Ministry of Agriculture and Rural Affairs (MARA). The United States claimed, among other things, that MARA refused to grant Certificates of Control at the bound tariff rates. It also complained that importers were required to purchase domestic rice in order to be allowed to import rice at the reduced-tariff levels.

II. The Agreement on Agriculture

Contested factual issues: Panel rules that Turkey adopted a decision to deny import permits

Article 4.2 of the Agreement on Agriculture provides that WTO Members "shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties...." Footnote 1, attached to this provision, states in part that: "[t]hese measures include quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises, voluntary export restraints, and similar border measures other than ordinary customs duties...."

The United States argued that Turkey's denial of licenses to import rice outside of the tariff rate quota was a measure of the kind which had been required to be converted into ordinary customs duties, such as a "quantitative import restriction" or a "discretionary import licensing" practice, and therefore was inconsistent with Article 4.2.

Before the Panel, Turkey contested the US claim that there was a "systematic rejection of requests", and argued that MARA "systematically and regularly" approved Certificates of Control allowing the importation

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

of rice. After considering the arguments, the Panel “preliminarily conclude[d], as a factual matter, that there is sufficient evidence on the record to substantiate a prima facie case that...Turkey has adopted a decision to deny, or fail to grant, Certificates of Control to import rice outside of the tariff rate quota.” The burden then shifted to Turkey to rebut this presumption.

The Panel asked Turkey to provide evidence that MARA “systematically and regularly” approved Certificates of Control for rice imports. Turkey declined to do so. It cited the “strict confidentiality requirements provided by Turkish law” and stated that “the Turkish officials involved in this Panel proceeding do not feel comfortable in risking information leaks and possible criminal accusations of violation of Turkish law on confidentiality.” It offered to provide “blacked out” copies of the Certificates of Control to the Panel and Secretariat only, on the condition that these would not be made available to the United States.

The Panel stated that such a procedure would amount to an ex parte communication, which is prohibited under the Dispute Settlement Understanding (DSU). (An ex parte communication is one made to the tribunal without notice to the adverse party.) The Panel noted that Turkey had not requested the adoption of any special or additional rules for the handling of confidential information. In any event, the Panel indicated that it was “not persuaded by Turkey’s arguments regarding limitations on its ability to share this information under domestic law.” It added that, “[e]ven if the Panel were to assume as valid Turkey’s arguments concerning its limitations under domestic law, that alone would not suffice to discharge Turkey from its evidentiary burden in these proceedings.” Therefore, “in the absence of the information required by the Panel and, more generally lacking any evidence that would allow us to reach a different conclusion”, the Panel found that Turkey failed to rebut the presumption that MARA had adopted a decision to deny Certificates of Control to import rice outside of the tariff rate quota.

III. Turkey’s denial of import permits breached the Agreement

Quantitative import restrictions were intended to “absorb local production”

The Panel stated that it was “clear... that the suspension of the concession of Certificates of Control was adopted to limit the amount of rice imports, in order to ensure the absorption of local production.” It ruled that “the factual determination that...Turkey has decided to deny, or fail to grant, Certificates of Control to import rice outside of the tariff rate quota in order to ensure the absorption of local production, is enough in itself to conclude that this conduct constitutes a quantitative import restriction....” It added that the “lack of transparency and of predictability of Turkey’s issuance of Certificates of Control to import rice is similarly liable to restrict the volume of imports.” The Panel concluded that the denial of the Certificates of

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

Control restricted the importation of rice, and that this conduct could be “considered as a measure of the kind which have been required to be converted into ordinary customs duties under Article 4.2 of the Agreement on Agriculture.”

Discretionary import licensing effectively “served as a way to administer trade”

The Panel also concluded that Turkey’s measure could be considered as a practice of “discretionary import licensing” and therefore was a measure of the kind required to be converted into ordinary customs duties under Article 4.2. The Panel reasoned that “[t]hrough this discretionary practice, the Turkish authorities have suspended the concession of Certificates of Control in regard to rice imports for periods of time. Given the fact that importers must produce a Certificate of Control in order to be able to import rice even if they fulfill the criteria required to be certified therein (as confirmed by Turkey), this practice effectively has served as a way to administer trade.”

Residual category of “similar measures”

The Panel recalled that Article 4.2 prohibited not only the specific types of measures enumerated in the footnote, but also “similar border measures other than ordinary customs duties”. It noted that the Appellate Body in Chile – Price Band System pointed to this “residual category” of measures as an indication that “the drafters of the Agreement did not seek to identify all ‘measures which have been required to be converted’ during the Uruguay Round negotiations.” In the present case, the Panel stated that “[e]ven if it were not to be considered as a “quantitative import restriction” or as a practice of “discretionary import licensing”, we consider that, due to its recognized impact on the administration of rice imports, Turkey’s decision to deny or fail to grant Certificates of Control to import rice outside of the tariff rate quota would at least qualify as a measure that has sufficient likeness or resemblance, so as to be similar to quantitative import restrictions or to practices of discretionary import licensing”, and was therefore inconsistent with Article 4.2.

IV. The domestic purchase requirement: modification of the conditions of competition to the “detriment of imported rice”

GATT Article III:4 requires that imported products be “accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.” Prior GATT and WTO cases have established that this requirement may be breached by measures that modify the conditions of competition between domestic and imported products.

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

In the present case, the Panel noted that only importers who purchased domestic rice were eligible to benefit from the tariff quotas for the importation of rice. In other words, according to the Panel, “compliance with the domestic purchase requirement was a necessary condition to benefit from access to the TRQ. Purchase of like imported rice did not grant the same benefit.” The Panel reasoned that “the domestic purchase requirement modified the conditions of competition in the Turkish market to the detriment of imported rice.” The Panel therefore found that Turkey accorded less favorable treatment to imported rice than that accorded to like domestic rice, in breach of GATT Article III:4.

Turkey argued that the Panel should not make any findings on the domestic purchase requirement because this measure had expired. (The measure expired four months after the Panel had been established.) The Panel considered that “it would be inappropriate to abstain from making findings with respect to...a measure that has been properly brought before it.” However, in line with prior case law, it declined to make any recommendation to the DSB with respect to a measure that no longer existed. In other words, the Panel found that the domestic purchase requirement violated Article III:4, but it declined to recommend to the DSB to request Turkey to bring this measure into conformity with its WTO obligations.

The Panel exercised “judicial economy” (*i.e.*, it declined to make any findings) on a number of other claims brought by the United States.

Significance of Decision/Commentary

This decision reinforces one of the most important substantive results to emerge from the Uruguay Round of trade negotiations (1986-1994): the so-called “tariffication” of non-tariff barriers on agricultural goods into tariff equivalents.

Agriculture remained largely outside of the disciplines of the multilateral trading system throughout most of the post-war era, until the entry into force of the WTO Agreement in 1995. One of the challenges inherent in the Uruguay Round negotiations on agriculture was the myriad of non-tariff barriers on agricultural trade maintained by countries around the world, which significantly complicated any market access discussions. For example, if country A imposed quantitative import restrictions on a particular agricultural good, while country B maintained a system of discretionary import licensing, it could be very difficult to negotiate the reduction or elimination of such measures, as it would often be unclear at what point the two sides had reached a reciprocal, balanced package of concessions. Negotiators sought a way to avoid such “apples and oranges” negotiations in the future.

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

The solution to this problem was to require countries to convert (“tariffy”) their non-tariff barriers on agricultural goods into ordinary customs duties, which would allow future negotiations to be based on the common denominator of tariffs. After years of acrimonious negotiations, the Uruguay Round negotiators agreed to Article 4.2 of the Agreement on Agriculture, which sets out the obligation that “Members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties...” A footnote to this provision provides a non-exhaustive list of such prohibited measures, as well as a catch-all category of “similar border measures other than ordinary customs duties.”

Many countries resisted the notion of tariffication, and the modalities of tariffication left significant discretion in the hands of implementing governments. Indeed, many countries established tariff equivalents that provided a higher level of protection than the non-tariff barriers they were intended to replace, a process known informally as “dirty tariffication.” Although “dirty tariffication” was not at issue in the Turkey – Rice dispute, it does illustrate the difficulties associated with the efforts to liberalize agricultural trade under WTO rules.

The rice import restrictions challenged by the United States in the present case were adopted by Turkey relatively recently, i.e., long after the conclusion of the Uruguay Round. Yet as the text of the Agreement makes clear, the tariffication obligation was not a one-off exercise, applicable only at the end of the Round. Article 4.2 imposes a continuing obligation that WTO Members not “revert to” measures “of the kind which have been required to be converted.” The Panel in the present case read this obligation in the comprehensive manner that was clearly intended by the drafters of the Agreement. Consequently, Turkey’s import licensing system for rice was found to be WTO-inconsistent.

Another interesting issue raised by this dispute is the extent to which Members may invoke domestic confidentiality laws in WTO dispute settlement proceedings. The United States and Turkey disagreed on whether import certificates were, in fact, habitually refused. Turkey argued that it “systematically and regularly” approved imports. However, when the Panel asked for evidence of such approval, Turkey claimed that the “strict confidentiality requirements provided by Turkish law” prevented it from providing such documents to the Panel. The Panel reacted with skepticism to this assertion, stating that it was “not persuaded by Turkey’s arguments regarding limitations on its ability to share this information under domestic law.” It added that even if there were such limitations under Turkish law, that “would not suffice to discharge Turkey from its evidentiary burden in these proceedings.”

The Panel’s reasoning on this issue is sound, and it reached the right result based on the facts of this case. That said, the WTO procedures on the use and protection of confidential information are relatively

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

undeveloped, notwithstanding the recourse by many Panels to ad hoc procedures on Business Confidential Information. For example, in anti-dumping or countervailing duty proceedings, investigating authorities often base their determinations on confidential information that is not subsequently provided to WTO Panels. A Panel may be placed in the difficult situation of reviewing the WTO-consistency of a determination without all of the evidence that was before the investigating authority. The somewhat unsettled nature of the WTO law in this area leaves litigating Members in the position of either not providing the information, and risking having the Panel draw adverse inferences, or providing the information and potentially breaching promises of confidentiality. In some instances, it may be the Government's information, and the Government can decide according to its interests. However, in other cases, the information may belong to private parties who gave the information to their Government under strict conditions of confidentiality. The resolution of these broader issues will need to be resolved either through negotiations or through future dispute settlement proceedings.

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

Multilateral Highlights

Negotiators End Three Weeks of Intensive Agriculture Negotiations, Will Reconvene in October to Continue Discussions

Negotiators have wrapped up three weeks of intensive World Trade Organization (WTO) Doha Round agriculture negotiations and will take a short break from the multilateral talks. Negotiators will next meet on October 8 to begin another two weeks of agriculture negotiations. During the September talks, WTO Members focused on the treatment of sensitive farm products and tariff rate quotas for such products, the designation of special products for developing countries, and special safeguard mechanisms for developed and developing countries. Negotiators did not focus on the numbers for tariffs cuts or farm subsidy cuts and agreed to revisit those issues in October.

During negotiations, WTO Members based their discussion on the July 17 draft negotiating text that Chairman of the Doha Round negotiations on agriculture Crawford Falconer prepared. On sensitive products, WTO Members accepted Falconer's proposed limit on such products at 4-6 percent of a country's total farm tariff lines. Members also generally agreed to accept Falconer's proposal that the lower cuts to which sensitive products will be subject should be compensated through expansion of tariff rate quota volumes on these products equivalent of 4-6 percent of domestic consumption. On the designation and treatment of special products, negotiators focused on a list of indicators for designation put forward by developing countries, and discussed tariff cuts for special products.

The United States also indicated on September 19, 2007 that it was prepared to work within the proposed range of numbers that Falconer included in his draft negotiating text; in the draft text, Falconer proposed an overall US agricultural spending cap of USD 13 – 16.4 billion a year. The United States had previously indicated that it was willing to accept an overall US cap of USD 17 – 23 billion per year. Chief US agriculture negotiator Joseph Glauber indicated, however, that the US position was conditional on other WTO Members' acceptance of the proposed range of cuts Falconer included in his draft text in other areas, such as farm tariff and subsidy cuts. WTO Members reacted positively to the US announcement. The EU stated that it would match cuts in US domestic support by decreasing EU support an additional 10 percentage points, thus providing the EU with an annual agricultural spending cap between USD 25.9 – 36.6 billion. Brazil described the US announcement as positive but encouraged US officials to “give a more precise indication on where [the United States] will go in order to keep up the level of engagement and give an incitement to others to show flexibility.”

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

Negotiators are cautiously optimistic that WTO Members can move the Doha Round forward in October. Falconer stated that there are encouraging signs of progress in the agriculture talks; he noted, however, that WTO Members still have much work ahead of them in forging a comprehensive Doha deal. Falconer stated that WTO Members seem to agree that the figures included in his draft negotiating text are in the “ballpark” of figures they can accept in a final Doha deal. Glauber noted that the three-week agriculture negotiating session was positive and added that WTO Members seem engaged and enthusiastic to complete the Doha Round. Officials from India noted that the agriculture negotiations were productive and that Falconer’s draft negotiating text serves as a good basis for negotiation, noting, however, that WTO Members are exploring other options outside the realm of Falconer’s paper. Officials from other countries – including Japan, Brazil, Switzerland, and Indonesia – echoed India’s statements and noted that the numbers included in Falconer’s text are not absolutes, adding that they do provide a good starting point for further negotiations. Once the talks resume in October, Falconer will likely circulate a revised version of his draft negotiating text that will include the proposed changes brought up during the September agriculture negotiations.

Agriculture remains one of the more contentious issues in the Doha Round, and although negotiators indicated that the September talks were positive, the talks did not produce any real forward movement. The United States’ indication that it is willing to be flexible in the agriculture talks can serve as catalyst to push the negotiations forward; the United States, however, has warned that it will only be flexible if other WTO Members indicate the same flexibility. Thus, without any new proposals from other WTO Members, the United States is unlikely to move and the Doha Round is likely to remain stalled. As has been the case since the Doha Round first began, WTO Members – including the United States – continue to indicate their political willingness to complete the round and as has been the case since negotiations were launched, it remains to be seen whether this willingness will translate to concrete action or reflect empty rhetoric.

China Files WTO Complaint Against US Duties on Imports of Glossy Paper

On September 14, 2007, US trade officials announced that China has filed a World Trade Organization (WTO) complaint against the preliminary antidumping and countervailing duty determinations on imports of Chinese coated paper. China’s request for consultations with the United States is the first since 2002 that it has initiated against the United States, and the first ever by China alone. US officials at the United States’ WTO Mission in Geneva did not comment on the complaint, but Chinese trade officials stated that

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

China opposes the "unfair practice of the United States in carrying out the antidumping duties" on Chinese imports of glossy paper.

On March 30, 2007, the US Department of Commerce (DOC) announced its preliminary decision to apply the US countervailing duty (CVD) law to imports from China. The preliminary decision determined that Chinese producers and exporters of coated free sheet (CFS) paper received countervailable subsidies ranging from 10.90 to 20.35 percent. The announcement marked the first time that the United States imposed countervailing duties on imports from a non-market economy (NME). Prior to the decision, the United States adhered to a longstanding rule that it would not apply the CVD law to imports from China or other NME countries.

In its consultation request, China alleges that the United States' determination to impose antidumping duties on imports of CFS paper violates the WTO Agreement on Subsidies and Countervailing Measures (SCM) and the WTO Antidumping (AD) Agreement. According to China's request, the United States: (i) failed to prove that the subsidies it alleged were specific to the paper industry; and (ii) miscalculated the benefit related to alleged preferential loan rates that the Chinese companies received, thus imposing preliminary countervailing duties in excess of the alleged subsidy. China also alleges that the US imposition of preliminary antidumping duties violated US obligations under Articles 7 and 9 of the AD Agreement to impose duties no higher than the provisional margin of dumping found. Under WTO rules, the United States and China must hold consultations within 30 days of the consultation request; both sides will have 60 days to consult in an attempt to reach a negotiated settlement. If a settlement cannot be reached, then China can request the formation of a WTO dispute settlement panel to rule on the matter.

China's complaint comes after several US WTO complaints against China but likely is not a direct response to those actions. DOC's reversal of its previous rule not to impose CVDs on imports from NMEs like China has led to other CVD petitions on Chinese products, such as pipe, woven sacks and off-road tires. Thus, the Chinese government might be seeking to prevent further CVD petitions against Chinese goods by attacking the legal and factual bases for the CFS Paper preliminary determination. These legal bases, some analysts opine, are suspect, particularly regarding DOC's preliminary conclusions on "policy lending" to the Chinese paper industry. Other analysts note that the CFS paper preliminary determination could have been politically motivated – a Bush Administration response to anti-China sentiment in Congress.

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

APEC Leaders Meet to Discuss Climate Change, WTO Doha Negotiations

On September, 8-9, 2007, Prime Minister of Australia John Howard hosted the 15th Asia-Pacific Economic Cooperation (APEC) Economic Leaders' Meeting in Sydney, Australia. Leaders from the twenty-one APEC member economies¹⁰ participated in the two-day meeting and concluded to further promote trade and economic reform. The meeting focused on climate change and the World Trade Organization (WTO) Doha Round negotiations.

At the meeting, APEC leaders reviewed developments in the Asia-Pacific region and discussed the challenges facing the region's future. APEC leaders concluded that the Doha Round is at a critical juncture and urged one another and other WTO Members to bring the Doha Round negotiations to a successful conclusion. The leaders also emphasized the liberalization of trade and investment through a successful conclusion to the Doha Round and committed to open their markets further. APEC leaders also signed a Joint Leaders' Statement in which they agreed on ways to promote better economic integration in the Asia-Pacific region, including:

- Further reducing barriers to trade and investment through free trade agreements (FTAs) and regional trading arrangements;
- Improving economic efficiency and the regional business environment; and
- Facilitating integration in sectors such as transportation, telecommunications, mining, and energy.

APEC leaders agreed that regional and bilateral free trade arrangements play a valuable role in accelerating trade and investment liberalization and in bringing APEC economies closer together; they agreed to examine the options and prospects for a Free Trade Area of the Asia-Pacific (FTAAP) as a long-term prospect. APEC leaders also committed to continue to strengthen protection and enforcement of intellectual property rights (IPR) in the region and they agreed that the Asia-Pacific region should take steps to improve the investment climate.

President Bush not only discussed the concept of the FTAAP during the Leaders' Summit but also brought up the free trade initiative on the sidelines of the APEC meetings. On September 7, 2007, at a meeting of business leaders, President Bush indicated that the United States supports the vision of a free

¹⁰ The twenty-one APEC member economies are: Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong, Indonesia, Japan, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, South Korea, Taiwan, Thailand, the United States, and Vietnam.

trade area of the Asia-Pacific and that the United States “will work hard to make the FTA a reality.” President Bush also stated that the United States would continue to foster bilateral ties with other APEC economies. To date, the United States has implemented FTAs with APEC members Australia, Singapore, Chile, Canada, and Mexico; the United States has also completed FTAs with APEC members South Korea and Peru, although the US Congress has not yet approved these agreements.

Although APEC leaders discussed a potential FTAAP, it is unlikely that the United States will actively pursue the concept in the short term. Presidential Trade Promotion Authority (TPA) expired on June 30, 2007, and Congress has not indicated that it is ready to renew TPA in the short term; without TPA, the United States is unlikely to initiate any new FTAs. Thus, it seems likely that the United States will continue to explore the FTAAP, but only as a long-term strategy. As for the discussion on Doha, although APEC leaders indicated their willingness to conclude the Doha Round successfully, it remains to be seen if this political will can be translated to concrete action. Neither the United States nor other APEC members have put forth new proposals meant to move the stalled multilateral negotiations forward; thus, the Joint Leaders' Statement could merely serve as empty rhetoric as opposed to a forward movement in the Doha Round.

Doha Negotiations Re-Commence, Although Washington Politics Could Further Stall Negotiations

World Trade Organization (WTO) Members have returned to the negotiating table in an effort to finalize a comprehensive multilateral Doha Round agreement. Trade officials met in Geneva on September 3, 2007, to begin an intensive negotiating round scheduled for the three weeks. WTO Director-General Pascal Lamy has expressed hope that WTO Members will be able to overcome differences over the next three weeks with regards to the contentious negotiating issues of agriculture and non-agricultural market access (NAMA).

In agriculture, Chair of the Agriculture Negotiating Group Crawford Falconer organized an informal meeting of the agriculture negotiating group to discuss his draft agriculture negotiating text and WTO Members' current negotiating positions and objectives. Following the meeting, Falconer noted that WTO Members seemed ready to engage in serious negotiations. Individual countries have also scheduled bilateral meetings that will occur over the next three weeks; these meetings will focus on agriculture and Members' negotiating positions in the agriculture talks. Initial discussions will focus on agriculture market access, the treatment of sensitive products, special product designation, the special safeguard mechanism for developing countries, and the erosion of tariff preferences. In NAMA, Chair of the NAMA

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

Negotiating Group Don Stephenson has also engaged WTO Members to discuss his draft negotiating text and has scheduled several meetings that will take place during the three-week period in Geneva.

Analysts speculate that this latest negotiating round will result in little forward movement for the Doha Round. WTO Members have already begun urging one another to make further concessions in their negotiating offers. European Trade Commissioner Peter Mandelson stated that he believes “that the United States holds the key to unlocking” the stalled Doha Rounds and he stated that that the United States must produce a new agriculture offer in which the United States accepts a cap on its overall trade-distorting domestic support at either USD 13 billion or USD 16.4 billion per year; the United States’ current offer is a cap on its overall domestic support between USD 17-23 billion per year. Meanwhile, United States Trade Representative (USTR) Susan Schwab has stated that major developing countries such as India, Brazil, and Argentina must show more flexibility in the Doha talks if WTO Members wish to complete a comprehensive deal by the end of 2007. Speaking on the sidelines of the Asia Pacific Economic Cooperation Summit on September 6, 2007, Schwab stated that India, Brazil, and Argentina have been unwilling to compromise; she urged them to return to the negotiating table with new NAMA offers. She added that the United States is prepared to show flexibility in the negotiations, but noted that US flexibility must be matched by others.

Trade officials have also expressed concern that political developments could further derail the stalled Doha Round. Trade officials fear that the US Congress’ current debate on the 2007 Farm Bill could overshadow the agriculture negotiations and that the United States is unlikely to make any new proposals on agriculture until the US Congress has approved a 2007 Farm Bill. Officials also point to the Bush Administration’s inability to secure renewal of Presidential Trade Promotion Authority (TPA); without TPA in place, WTO Members feel that US Congressional approval and passage of a final Doha deal is not assured. Trade officials have also opined that without TPA in place, WTO Members are more reluctant to make concessions to secure a final Doha Agreement that could be rejected or amended by the US Congress. Officials also state that the upcoming 2008 Presidential campaign could shift US attention away from the multilateral talks, thus further delaying the completion of the Doha Round.

Although it seems that trade officials have sufficient political will to reach a final Doha Agreement, it remains to be seen whether any WTO Member will introduce new offers to move the Round forward, or whether that political will is mere empty rhetoric. To date, trade officials – including US and EU officials – have indicated their willingness to reassess their negotiating offers, but only if other WTO Members come forward with new concessions. This “wait-and-see” strategy has been one of the major delaying factors of the Doha Round, and all signs indicate that this pattern may persist over the next three weeks of

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

JETRO Monthly Report

multilateral negotiations. If that does prove true, then it seems more unlikely that WTO Members will reach a final Doha Agreement by the end of 2007.

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

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

WHITE & CASE LLP | SEPTEMBER 2007 | 57
DOC #1280655