



July 2009

Japan External Trade Organization
WTO and Regional Trade Agreements
Monthly Report

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Summary of Reports

United States

US and Chinese Trade Officials Meet Under First Joint Meeting of Strategic and Economic Dialogue

Summary

The United States and China recently concluded the first session of the US-China Strategic and Economic Dialogue (S&ED) in Washington, DC. During the two-day talks, US and Chinese officials discussed a number of issues, including the global financial crisis, post-recovery policies to promote sustained and balanced growth, the importance of maintaining open trade and investment environments, global and regional security, and political issues such as nonproliferation, military relations, and climate change. We review below the first session of the S&ED and the two sides' discussion on economic, trade and investment issues.

United States Highlights

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

- New Consumer Product Safety Improvement Act Regulations to Enter Into Effect August 14, 2009
- Senate Approves Extension of Burma Sanctions Following House Vote
- Senate Finance Committee Favorably Reports Deputy USTR Nominee as Administration Faces Outgoing Geneva Deputy USTR
- Sen. Stabenow Introduces 2009 Trade Enforcement Bill
- Senators Urge President Obama to Impose ITC-Recommended Relief in Section 421 Tire Case
- USTR Kirk Announces Administration's "New Initiatives for Trade Enforcement"
- EU Trade Commissioner Ashton and USTR Kirk Agree to Increase Bilateral Cooperation on Resolving Key Outstanding Trade Disputes
- Department of Commerce Approves First Indian Company for VEU Program

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Free Trade Agreements

Free Trade Agreements Highlights

- USTR Requests Comments on Labor Issues and Pending US-Colombia FTA
- USTR Requests Comments on KORUS FTA
- Fifth ACTA Negotiating Round Focuses on Enforcement Practices, Transparency, Generic Medicine and Drugs
- USTR, Department of State Request Public Comments as Part of BIT Review

Multilateral

WTO, UNEP Issue Joint Report on Trade and Climate Change

On June 26, 2009, the World Trade Organization (WTO) and the United Nations Environment Programme (UNEP) released a joint report on Trade and Climate Change. The report examines the science of climate change; the “economics” of climate change; multilateral efforts to tackle climate change; and national climate change policies and their effect on trade. We analyze herein the report’s discussion on the implications of climate change on trade.

Multilateral Highlights

- WTO DSB Establishes Panel in US-China Poultry Ban Dispute
- WTO Releases Latest Report on Members’ Trade-Related Actions in Face of Economic Crisis

Reports in Detail

United States

US and Chinese Trade Officials Meet Under First Joint Meeting of Strategic and Economic Dialogue

Summary

The United States and China recently concluded the first session of the US-China Strategic and Economic Dialogue (S&ED) in Washington, DC. During the two-day talks, US and Chinese officials discussed a number of issues, including the global financial crisis, post-recovery policies to promote sustained and balanced growth, the importance of maintaining open trade and investment environments, global and regional security, and political issues such as nonproliferation, military relations, and climate change. We review below the first session of the S&ED and the two sides' discussion on economic, trade and investment issues.

Analysis

I. Background

President George W. Bush and Chinese President Hu Jintao initiated the original Strategic Economic Dialogue (SED) in September 2006 as a high-level forum in which representatives from their two governments could meet biannually to discuss "bilateral and global strategic economic issues of common interest and concern." China and the United States convened the first SED meeting in December 2006, followed by meetings in May 2007, December 2007, July 2008, and December 2008. Upon entry into office, the Obama Administration decided to rename the forum and widen the topics covered under the S&ED to include political and security issues. President Obama and President Hu Jintao formally established the S&ED in April 2009. On July 27-28, 2009, the two sides co-chaired the first joint meeting of the S&ED in Washington, DC. Secretary of State Hillary Rodham Clinton and Chinese State Councilor Dai Bingguo led the strategic discussions and Treasury Secretary Timothy Geithner and Chinese Vice Premier Wang Qishan led the economic discussions under the S&ED.

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II. Discussion Topics at S&ED Meeting

During the two-day S&ED talks, US and Chinese officials discussed a number of issues, including the global financial crisis, post-recovery policies to promote sustained and balanced growth, the importance of maintaining open trade and investment environments, and global and regional security and political issues such as nonproliferation, military relations, and climate change.

A. Opening Statements

In opening the S&ED, President Obama stated that the United States and China “both have reason to promote lasting economic recovery from the global financial downturn,” and he noted that in order to ensure economic recovery, both sides must strengthen cooperation on transparency and regulatory reform to promote financial stability, pursue “free and fair” trade, “seek to conclude an ambitious and balanced” World Trade Organization (WTO) Doha Round agreement, and increase China’s role in international and multilateral institutions. Chinese President Hu Jintao echoed President Obama’s sentiments in a statement read by Chinese Vice Premier Wang Qishan, and he expressed hope that both sides would engage in in-depth discussions in order to seek beneficial progress. Treasury Secretary Timothy Geithner noted that the United States and China were “meeting at a time of opportunity to reshape the global economic structure and redesign the global financial architecture,” and he stated that US officials would work with their Chinese counterparts “to ensure their full engagement and representation in the design of the key multilateral agreements and groupings, such as the G20, the Financial Stability Board, and the international financial institutions, that will chart a course of more balanced and sustainable global growth in the future.” Vice Premier Wang Qishan added that during the S&ED, the United States and China would have intensive discussions on further measures to address the global financial crisis, strengthening financial systems, deepening trade and investment, and sustainable growth and development.

B. US-China Cooperation in Economic, Financial and Other Sectors

As noted, Treasury Secretary Geithner and Chinese Vice Premier Wang Qishan led the economic discussions. US officials participating in the economic discussion at the S&ED included, among others:

- Secretary of Agriculture Thomas Vilsack;
- Secretary of Labor Hilda Solis;
- Secretary of Transportation Raymond LaHood;
- United States Trade Representative (USTR) Ron Kirk;

- Director of the National Economic Council Lawrence Summers; and
- Chairman of the Federal Reserve Ben Bernanke.

Chinese officials joining the economic discussion included, among others:

- Minister of Finance Xie Xuren;
- Governor of the People's Bank of China Zhou Xiaochuan;
- Chairman of the China Banking Regulatory Commission Liu Mingkang;
- Chairman of the China Securities Regulatory Commission Chairman Shang Fulin;
- Vice Minister of Foreign Affairs He Yafei;
- Vice Minister of Agriculture Niu Dun; and
- Vice Minister of Commerce Ma Xiuhong.

During the economic discussion at the S&ED, Secretary Geithner and Vice Premier Wang Qishan noted that both sides are committed to more **open trade and investment** and to fighting protectionism to promote economic growth, job creation and innovation. Both sides agreed to call upon other WTO Members to work together for an ambitious and balanced conclusion to the Doha Development Agenda in 2010. The two sides also acknowledged that the ongoing US-China bilateral investment treaty (BIT) negotiations could help to strengthen bilateral trade and investment ties.

On the issue of foreign investment, China agreed to further decentralize approval authority and streamline approval procedures for foreign investment, including by increasing over time the threshold for central government review. China also agreed to commit itself to the implementation of the Generally Accepted Principles and Practices governing Sovereign Wealth Funds (SWFs). For its part, the United States confirmed that the Committee on Foreign Investment in the United States (CFIUS) process ensures the consistent and fair treatment of all foreign investment without prejudice to the place of origin, and reaffirmed its commitment to the open and non-discriminatory principles for recipients of sovereign wealth fund investment as identified by the Organization for Economic Cooperation and Development (OECD). Both sides agreed to accelerate the implementation of "Guidelines for China-US High Technology and Strategic Trade Development" and to formulate an "Action Plan on Expansion of China-US High Technology and Strategic Trade Cooperation in Priority Sectors." In addition, the United States agreed to explore the facilitation of US exports of high-tech products to China. Both countries recognized the importance of non-discriminatory government procurement policies and agreed to strengthen their

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cooperation in order to accelerate China's accession to the WTO Government Procurement Agreement (GPA). The two sides also agreed to strengthen cooperation on anti-money laundering and countering the financing of terrorism, including counterfeiting. US officials also noted that they would "endeavor promptly" to recognize China's market economy status.

US and Chinese officials agreed to take measures to promote **balanced and sustainable economic growth** in their respective economies to ensure a strong recovery from the international financial crisis. Both countries agreed to enhance communication and the exchange of information regarding macro-economic policy, and will work together to pursue policies of adjusting domestic demand and relative prices to lead to more sustainable and balanced trade and growth. The United States agreed to take measures to increase national saving as a share of GDP, and China agreed to continue to implement structural and macroeconomic policies to stimulate domestic demand and increase the contribution of consumption to GDP growth. China agreed to further enhance access in its services market and expand channels for non-government investment. Chinese officials voiced their concern regarding the "risk of holding US Treasury bonds" and US officials promised to reduce the US budget deficit to a "sustainable" level over the next several years. Chinese officials also expressed concerns over possible inflation resultant from the United States' "extremely loose monetary and fiscal policies" to which US officials responded that the United States would explore eliminating such policies when the US economy began showing signs of recovery.

Both sides also agreed to **build a sound financial system**, and improve financial regulation and supervision. Specifically, both sides agreed to work together to expedite financial sector reform, to improve financial regulation and supervision, and to promote greater financial market transparency through, for example, increasing capital adequacy ratio and capital quality, imposing on financial institutions counter-cyclical provision requirements, and requiring financial institutions to limit their leverage ratio. The United States agreed to pursue comprehensive reform of financial regulation and supervision to create a more stable financial system and to help prevent and contain potential future crises. China agreed to promote interest rate liberalization and consumer finance; continue to allow foreign-invested banks incorporated in China that meet relevant prudential requirements to enjoy the same rights as domestic banks with regard to underwriting bonds in the inter-bank market; gradually increase the number of qualified joint-venture securities companies that can participate in proprietary trading and investment advisory services; and support qualified overseas companies to list on Chinese stock exchanges through issuing shares or depository receipts. China also agreed to cooperate with the US Federal Deposit Insurance Corporation (FDIC) in order to build a similar deposit insurance system in

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China. Both sides agreed to complete the International Monetary Fund (IMF) Financial System Assessment Programs (FSAPs) in a timely manner. The United States and China also will conduct technical exchanges on the development of private pensions, and will share experiences and strengthen cooperation with regard to improvement of insurance regulation.

Both sides also pledged to cooperate on **reforming and strengthening the international financial institutions**. This includes strengthening the effectiveness and legitimacy of international financial institutions (IFIs), and ensuring that China and other emerging and developing economies “have greater voice and representation” in IFIs.

C. US-China Cooperation on Global Issues

At the S&ED meeting, the United States and China negotiated a Memorandum of Understanding (MOU) to Enhance Cooperation on **Climate Change, Energy and the Environment**. The MOU establishes a mechanism for climate change policy dialogue and cooperation to promote: (i) discussion and exchange of views on domestic strategies and policies for addressing climate change; (ii) solutions for promoting the transition to low-carbon economies; (iii) international negotiations on climate change; (iv) joint research, development, deployment, and transfer of climate-friendly technologies; (v) cooperation on specific projects; (vi) adaptation to climate change; (vii) capacity building and the raising of public awareness; and (viii) cooperation on climate change between cities, universities, provinces and states of the two countries. The two sides also reaffirmed their commitment to work together to further promote the full implementation of the United Nations Framework Convention on Climate Change. Both countries pledged to strengthen cooperation on renewable energy, cleaner uses of coal, including carbon capture and sequestration, smart grid, shale gas, second and third generation biofuels and advanced nuclear, and also agreed to carry out dialogue in the fields of strategic petroleum reserves and increased transparency in energy markets.

D. Next Steps

According to a US-China joint statement, the two sides will hold the second round of the US-China S&ED in Beijing in 2010. This schedule represents a change from the SED under the Bush Administration when officials held meetings a twice a year.

E. Private Sector Reaction

Reaction from the US private sector to the first S&ED meeting was mixed. The US Chamber of Commerce lauded US and Chinese officials for starting off on “a good step toward the October meeting of the Joint Commission on Commerce and Trade (JCCT) where the two sides can achieve tangible

progress in reducing trade and investment protectionism and curtailing industrial policies.” The US-China Business Council echoed the statement of the US Chamber of Commerce, and stated that some progress had been achieved in the talks. The United States Business and Industry Council, meanwhile, criticized the Obama Administration for not bringing the issue of China’s alleged currency manipulation to the S&ED table, issuing a press statement in which it noted that “the President could have pressed China to stop the pervasive trade cheating that has helped addict America to debt and trigger the economic crisis.”

In China, opinions on the first S&ED meeting were also mixed. Several observers and analysts gave a positive assessment of the first meeting, noting that the S&ED “deserts the previous SED’s narrow-minded nagging about Chinese currency and human rights issues” and adopts a wider view on more issues of interest to the two countries. These observers also opined that the first meeting indicated a strong will to cooperate between the two countries and served as a “fresh start” to the US-China bilateral relationship. Other experts, however, remain skeptical of the effectiveness of the S&ED. An academic from the Shanghai Academy of Social Science opined that the United States’ statements on how it would control inflation are “merely subjective wishes and the real situation depends on the unforeseeable economic development in the United States.” The Deputy Director of the China Industrial Overseas Development & Planning Association expressed doubt that high-level dialogues like the S&ED would effectively solve any disagreements between the two countries on trade issues, especially during the global recession. An academic from Shanghai International Studies University even warned that “China should not be carried away by the United States’ softened position” as offered during the S&ED, adding that the United States “might utilize the weakest link in the Chinese economy, namely, its financial sector, to suppress China.”

Outlook

Although US and Chinese officials were engaged in discussion on a wide assortment of bilateral and multilateral issues, it appears that the first S&ED meeting provided little in terms of concrete outcomes and deliverables. Most of the discussion on economics, trade and investment focused on how the two economies could respond to the current financial climate, and both sides made various promises to increase and strengthen their cooperation with one another in “responding effectively” to the global recession. However, neither side brought up or discussed at length contentious bilateral irritants during the S&ED economic talks, such as: (i) China’s currency policies; (ii) alleged trade barriers in the United States like the new “Buy American” requirements or the continued US ban on poultry imports; (iii) WTO disputes between the two countries regarding the poultry ban, trade remedies, intellectual property, and other issues; (iv) carbon emissions caps or “carbon tariffs” designed to mitigate climate change; or (v) the

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upcoming decision that President Obama will have to make regarding the Section 421 case on Chinese tire imports. Each of these contentious issues have topped the US-China trade agenda in recent months and it remains unclear as to why the officials at the S&ED talks chose not to explore each of these bilateral issues at such a high-level forum. Some observers have opined that each of these bilateral trade matters are too technical and specific for such high-level talks whereas others have criticized the United States and China for having missed the opportunity to discuss these issues at length (and attempt to work them out) at the S&ED.

The lack of discussion on these matters indicates that the Obama Administration could see the S&ED simply as a tool to show China and others that it remains committed to strengthening relations with US trading partners and that the United States is still open to discussion and cooperation on a wide swath of issues. On the other hand, the Obama Administration could simply view the S&ED as such a high-level forum that it would be impossible to discuss all the specific bilateral trade issues between the two countries, choosing instead to discuss those matters at length at the upcoming October 2009 meeting of the JCCT, through other bilateral channels, or through multilateral channels such as the WTO.

When the Obama Administration began, many observers and analysts wondered what form the high-level bilateral dialogue between the United States and China would take under the new President. As many had predicted, the Administration changed the SED's name in order to demonstrate a change from the previous Administration. However, the S&ED follows much the same format and key topics as the SED, but with a few other issues such as politics and security. The broadened scope of the S&ED has allowed President Obama to include Secretary of State Hillary Clinton in the bilateral talks, thereby potentially increasing the scope of the State Department's role in economic and trade issues. Certainly Treasury Secretary Geithner led the economic discussions, but Secretary Clinton's participation in the meetings could point to several indications: (i) that President Obama may see the Secretary of State increasing her role on economic, trade and investment issues, particularly with China; (ii) that President Obama sees the S&ED as more of a forum where the two sides can address non-economic issues (such as political and regional security issues) as opposed to economic, trade and investment issues (this can certainly be argued given the lack of discussion at the S&ED on major bilateral economic and trade issues as described above); or (iii) a combination of both.

At this stage, the next S&ED meeting might provide better clues as to how the Administration sees the high-level forum, but given the vague announcement that the next S&ED meeting will take place much later in 2010, it is difficult to predict how the Obama Administration views the S&ED. For now, one should

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monitor the upcoming JCCT meeting, where US and Chinese officials may choose to discuss all the trade and investment issues that they chose not to explore during the S&ED.

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United States Highlights

New Consumer Product Safety Improvement Act Regulations to Enter Into Effect August 14, 2009

On August 14, 2008, President Bush signed into law the Consumer Product Safety Improvement Act of 2008 (CPSIA, Pub. L. No. 110-314). Among other things, the law increased the authority of the Consumer Product Safety Commission (CPSC) and mandated new regulations and testing of products. Many of the new requirements enter into effect or become stricter as of August 14, 2009. We review herein upcoming changes mandated by the CPSIA of which manufacturers and importers should be aware.

I. New Lead Content Limits

The CPSIA sets new limits for the lead content in children's products.¹ The CPSIA defines children's products as those designed or intended primarily for children twelve years of age and younger. Limits on the amount of lead in such products are phased-in over the course of three years. Effective February 10, 2009, children's products containing more than 600 parts per million (ppm) of lead were considered banned hazardous products in the United States. Effective **August 14, 2009**, the permissible level of lead in children's products will be reduced to **300 ppm** of lead. The permissible level will be reduced to 100 ppm of lead on August 14, 2011, unless the CPSC determines that it is not technologically feasible to achieve this limit. These lead content limits apply to children's products manufactured on or after the effective date, **as well as** to children's products in inventory at the time.

II. New Lead Paint Limits

The CPSIA and CPSC regulations limit the amount of lead in paint and surface coatings. Lead-containing paint - defined as paint or similar surface coatings that contain lead in excess of established limits - is banned in the United States. The ban applies to: (i) lead-containing paint; (ii) toys and other articles intended for use by children bearing lead-containing paint; and (iii) furniture articles for consumer use bearing lead-containing paint (excluding household items such as large and small appliances, bathroom fixtures, windows, doors, and window shades). Effective **August 14, 2009**, the CPSC will reduce the maximum amount of allowable lead in such coatings from 0.06 percent (600 ppm) to **0.009 percent (90**

¹ Component parts of children's products are only subject to the lead content limits if they are accessible to a child through foreseeable use and abuse.

ppm) of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. Products with coatings with lead content above 0.009 percent will be considered banned hazardous products under the CPSIA. This limit will apply to products manufactured on or after August 14th, **as well as** to products in inventory on that date.

III. New Third-Party Testing Requirements

The CPSIA imposes a third-party testing requirement for all consumer children's products. Under the requirement, every manufacturer or private labeler of a children's product must have its product tested by an accredited independent testing lab and, based on the testing, must issue a certificate that the product meets all applicable CPSC requirements.² The third-party testing and certification requirements for children's products are being phased in on a rolling schedule, *i.e.*, the CPSC is issuing laboratory accreditation regimes for different categories of children's products. Once a laboratory accreditation requirement has been issued, each children's product in the category that is manufactured more than ninety days after the accreditations become effective must be tested and certified to meet the applicable requirements.

Therefore, for any children's product manufactured on or after August 14th, a CPSC-accredited lab must certify that the product does not contain more than 300 ppm of lead, and does not contain paint or coatings with more than 90 ppm of lead.

IV. New Tracking Labels for Children's Products

The CPSIA requires manufacturers to affix a tracking label or other distinguishing permanent mark on children's products containing certain basic information from which an interested party could ascertain the following:

- Manufacturer or private labeler;
- Location and date of production;
- "Cohort information" which the CPSC defines as batch number, run number or other identifying characteristics; and

² The CPSC is given authority either to accredit laboratories ("third party conformity assessment bodies") for doing the required testing of children's products or to designate independent accrediting organizations to accredit the testing laboratories.

- Any other information determined by the manufacturer to facilitate ascertaining the specific source of the product in the event of a recall.

Tracking labels normally must be affixed to the product “to the extent practicable.” The requirement for tracking labels enters into force on August 14, 2009 as well.

V. Violations and Failure to Comply

The CPSIA increases the civil penalties that may be assessed for violations of a consumer product safety rule under the CPSIA, or any similar rule, regulation, standard, or ban under any other Act enforced by the CPSC to a maximum of USD 100,000 per separate violation (an increase from the original USD 5,000), with a USD 15 million cap for a series of related violations (an increase from the original USD 1.25 million cap). The CPSIA also establishes criminal penalties for a knowing and willful violation of the CPSIA of five years imprisonment and/or a monetary fine up to USD 500,000, and provides for the forfeiture of assets associated with such violation. Individual directors, officers and agents who knowingly and willfully perform any of the CPSIA's prohibited acts, as amended by the CPSIA, may also be found criminally liable, and are subject to the penalties described above, without regard to any penalties to which the corporate entity itself may be subject, except that an individual may only be fined an amount up to USD 250,000.

In addition, the CPSIA states that the CPSC, in determining the amount of any penalty to be sought for a violation, must consider the nature, circumstances, extent and gravity of the violation, including such factors as the nature of the product defect or substance, the severity of the risk of injury, the occurrence or absence of injury, the number of defective products distributed or the amount of substance distributed, and the appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses, as well as any other factors as appropriate. The CPSIA requires the CPSC to issue final regulations providing its interpretation of these penalty factors by August 14, 2009.

Senate Approves Extension of Burma Sanctions Following House Vote

On July 21, 2009, the House of Representatives passed a resolution (H.J. Res. 56) by voice vote that extends trade sanctions against Burma's military junta for one year (current restrictions are due to expire on July 26, 2009). The resolution renews the sanctions against Burma first put into place in 2003 (P.L. 108-61). The sanctions bar importation into the United States of any article produced, mined, manufactured, grown, or assembled in Burma until its regime improves its record on human rights, moves

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toward a democratic government and complies with anti-drug treaties. The Senate approved H.J. Res 56 by voice vote on July 23, 2009. President Obama signed the sanctions into law on July 28, 2009.

Senate Finance Committee Favorably Reports Deputy USTR Nominee as Administration Faces Outgoing Geneva Deputy USTR

On July 23, 2009, the Senate Finance Committee favorably reported President Obama's nominee for Deputy United States Trade Representative (DUSTR) Miriam Sapiro. On April 14, 2009, President Obama announced his intent to nominate Sapiro for DUSTR. Sapiro currently serves as President of Summit Strategies International, a firm that advises non-profit organizations and companies on international Internet and telecommunications policy issues. Prior to this role, she served as Special Assistant to the President for Southeast European Stabilization and Reconstruction under President Clinton. In this capacity, she supervised efforts to revitalize the region, working with USTR and other agencies, as well as other governments and international financial institutions. From 1997 to 1999 she served at the National Security Council as Director for European Affairs, where she developed and coordinated implementation of security and economic policies. Sapiro has also served as a member of the Secretary of State's Policy Planning Staff and the Office of the Legal Adviser. She received her B.A. from Williams College and her J.D. from New York University School of Law.

Separately, DUSTR Peter Allgeier has announced that he will leave his post in Geneva in the coming weeks. USTR Ron Kirk has stated that although Ambassador Allgeier is leaving Geneva, he would like to keep the DUSTR on his team so that he continues to remain involved in the World Trade Organization (WTO) Doha Round negotiations. According to some sources, the Administration has been interviewing candidates to replace Ambassador Allgeier for the Geneva-based post. Ambassador Allgeier's move from Geneva is likely to further complicate the stalled Doha talks and the informal agreement among WTO Members to complete the Doha Round by 2010.

Sen. Stabenow Introduces 2009 Trade Enforcement Bill

On July 16, 2009, Sen. Debbie Stabenow (D-MI) introduced a bill meant to strengthen US trade enforcement through the creation of a Trade Enforcement Division in the Office of the United States Trade Representative (USTR) and a Deputy USTR for Trade Enforcement, among other things (S. 1466). In introducing the bill, Sen. Stabenow stated that her bill "will provide the Administration with additional personnel and resources necessary to identify and prosecute countries that cheat . . . [and] will also create a chief manufacturing negotiator to ensure manufacturing always has a seat at the table in US trade policy developments." S. 1466 includes the following provisions:

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- **Deputy United States Trade Representative for Trade Enforcement.** The bill would establish a Trade Enforcement Division in the Office of the USTR and the position of a Deputy USTR for Trade Enforcement. The principal function of the Deputy USTR for Trade Enforcement would be to ensure that US trading partners comply with trade agreements to which the United States is a party. The Deputy USTR would also aid USTR in investigating and prosecuting disputes before the World Trade Organization (WTO) and pursuant to other bilateral or regional trade agreements to which the United States is a party. In addition, the Deputy USTR would make recommendations with respect to the administration of US trade laws relating to barriers imposed by foreign governments to the importation of US goods, services, and intellectual property, and other trade matters.
- **Chief Manufacturing Negotiator.** The bill would also establish a Chief Manufacturing Negotiator at USTR. The principal function of the Chief Manufacturing Negotiator would be to conduct trade negotiations and to enforce trade agreements relating to US manufacturing products and services. The Chief Manufacturing Negotiator would serve as a “vigorous advocate on behalf of United States manufacturing interests.”
- **Annual Report on Trade Enforcement.** The bill mandates USTR to submit an annual report to Congress in which it identifies US trade enforcement priorities and enforcement actions that USTR has taken during the previous year and the impact that such enforcement actions have had on trade barriers in foreign countries. The report would also identify trade practices of foreign countries on which USTR will focus enforcement efforts; these practices would be labeled “priority foreign country trade practices.” After the submission of the annual report, USTR would consult with the Senate Finance Committee and the House Ways and Means Committee with respect to the priorities, actions, and practices identified in the report; if either of the Committees requests by majority vote that a trade practice of a foreign country be identified as a “priority foreign country trade practice,” USTR would include such identification in the report. 120 days after submission of the report, USTR would, with respect to any priority foreign country trade practice identified in the report: (i) initiate WTO dispute settlement consultations; (ii) initiate dispute settlement consultations under the applicable provisions of any bilateral or regional trade agreement to which the United States is a party; (iii) seek to negotiate an agreement that provides for the elimination of the priority foreign country trade practice or, if elimination of the practice is not feasible, an agreement that provides for compensatory trade benefits; or (iv) take any other action necessary to eliminate the priority foreign country trade practice.
- **Director of Intellectual Property Rights Enforcement.** The bill establishes within the Department of the Treasury the position of Director of Intellectual Property Rights Enforcement. The Director

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would coordinate all activities of the Department of the Treasury involving the enforcement of intellectual property rights (IPR) and coordinate with US Customs and Border Protection (CBP) Protection and US Immigration and Customs Enforcement (ICE) with respect to such enforcement. The Director would also oversee the development and implementation of a strategic plan for the enforcement of IPR and conduct an evaluation of the effectiveness of the organizational structure of CBP for reducing the entry into the United States of counterfeit or pirated goods and other goods in violation of other IPRs.

- **Other Provisions.** The bill also contains provisions that: enhance inter-agency cooperation on IP protection and enforcement between CBP, ICE, USTR, and Treasury; enhance technical assistance and training for those government agencies involved in the enforcement efforts as included in the bill; increase funding for enforcement efforts; and mandate new reports to Congress on various agencies' enforcement actions and priorities.

S. 1466 was last referred to the Senate Finance Committee for review.

Sen. Stabenow's bill came on the heels of a July 16 announcement by USTR Ron Kirk on the Obama Administration's "New Initiatives for Trade Enforcement," which outlined the Administration's plans to increase oversight of labor standards abroad; enforce labor provisions as included in US Free Trade Agreements (FTAs); improve foreign market access for US agricultural and manufacturing interests; and enforce IPR. USTR Kirk stated that the Obama Administration will place a heavier focus on enforcing US trade agreements through "concrete new measures" including but not limited to:

- Working with US trading partners to implement enforceable labor standards and immediately identifying and investigating labor violations "before they can disadvantage American workers;"
- Consistently monitoring US partners' trade practices;
- Strongly addressing sanitary and phytosanitary barriers "across the board, as well as on a case by case basis;"
- Addressing technical barriers to trade, such as technical regulations and standards that restrict US exports; and
- The continued use trade remedies, such as antidumping and anti-subsidy laws "to correct distortions of trade."

Sen. Stabenow has introduced bills similar to S. 1466 in previous Congressional sessions and the latest version of her trade enforcement legislation does not differ greatly from past versions. Previous versions

of the bill saw little movement in Congress, and some Congressional observers opine that S. 1466 is unlikely to gain much traction in the current Congress, given the packed schedule of (mostly domestic, non-trade related) legislative matters that legislators are attempting to complete before the August recess. USTR Kirk's enforcement speech may have also served to placate some legislators' demands for more enforcement action, thus taking away some attention from S. 1466. The bill could see some movement in the Fall in the form of Congressional Committee consideration, but at this early stage, it is unlikely that Sen. Stabenow's enforcement bill will see major movement in Congress in the short-term.

Senators Urge President Obama to Impose ITC-Recommended Relief in Section 421 Tire Case

In a July 16, 2009 letter to President Obama, several Senators urged the President to adopt the recommendations made on June 29 by the International Trade Commission (ITC) for import relief in a case brought by the United Steelworkers (USW) under Section 421 of the Trade Act of 1974 and involving a surge in passenger and light truck tires imported from China. On June 18, 2009, the ITC announced its affirmative determination in the Section 421 investigation of imports of certain passenger vehicle and light truck tires from China. The ITC decided, by a vote of 4 to 2, that tires from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. On June 29, 2009, the ITC announced that it will propose that the President, for a three-year period, impose a duty, in addition to the current rate of duty, on imports of certain passenger vehicle and light truck tires from China. This duty would be 55 percent *ad valorem* in the first year, 45 percent *ad valorem* in the second year, and 35 percent *ad valorem* in the third year. The ITC further announced that it will recommend that, if applications are filed, the President direct the Department of Labor and the Department of Commerce to provide expedited consideration of Trade Adjustment Assistance (TAA) for firms and/or workers that are affected by the subject imports. The ITC presented its recommendations to President Obama on July 9, 2009. President Obama will make the final decision, expected by September 17, 2009, regarding whether to provide relief to the US tire industry, and the type and duration of any relief granted. *(Please refer to our June 18, 2009 alert on the Section 421 case for more detailed information.)*

According to the July 16 letter from the Senators, the US tire industry "is on its knees due to the market disruption caused by imports of Chinese tires" and the legislators noted that President Obama's decision to adopt the ITC's recommendation would remedy the disruption and "halt the further decline of the US tire industry." The Senators opined that the Section 421 case is an example of why the China-specific

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safeguard was adopted in conjunction with China's World Trade Organization (WTO) accession, stating that from 2004 to 2008, Chinese tire imports "drastically" reduced US producer market share by "surging 215 percent in volume and a staggering 295 percent in value." The Senators also point to the ITC's findings "that the increased imports paralleled the collapse of domestic production, shipments, capacity and employment." The Senators agree with the ITC's recommended relief of tariffs on imports of passenger and light truck tires from China – 55 percent in year one, 45 percent in year two and 35 percent in year three – and agree that adopting the ITC's recommended relief would "provide the breathing room the industry and its workforce so desperately need to bring back its capacity and workforce." In addition, the Senators opine that President Obama's decision to adopt the ITC's recommendations would "send a powerful message to the American people that you intend to keep your promise to enforce trade laws fully."

Signatories to the letter include Sens. Blanche Lincoln (D-AR), Evan Bayh (D-IN), Debbie Stabenow (D-MI), Bob Casey (D-PA), Sherrod Brown (D-OH), Arlen Specter (D-PA), Kirsten Gillibrand (D-NY), Lindsey Graham (R-SC), Mark Warner (D-VA), Kay Hagan (D-NC), and Richard Burr (R-NC).

As we have previously noted, President Obama's safeguards decision in the Section 421 tires case is likely to prove a "litmus test" with respect to his Administration's stance on China trade and its trade policy more generally. Under law, President Obama must make a "yes or no" decision on whether to impose safeguards, and he must make his decision under a prescribed period of time. Consequently, President Obama cannot avoid the decision, and his decision will have direct consequences for the US-China trade relationship and US trade policy in general. The imposition of safeguards under Section 421 would represent a significant departure from the policy of the Bush Administration that rejected the imposition of Section 421 safeguards on all four occasions such safeguards were recommended. A decision by President Obama to impose safeguards in this case could encourage other US industries to pursue Section 421 actions against imports from China, thus opening a potential "floodgate" of 421 petitions and serving to anger China.

USTR Kirk Announces Administration's "New Initiatives for Trade Enforcement"

On July 16, 2009, United States Trade Representative (USTR) Ron Kirk delivered a speech in Pittsburgh, Pennsylvania on "New Initiatives for Trade Enforcement" in which he outlined the Obama Administration's plans to increase oversight of labor standards abroad; enforce labor provisions as included in US Free Trade Agreements (FTAs); improve foreign market access for US agricultural and manufacturing interests; and enforce intellectual property rights (IPR). The initiatives included in the speech match

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President Obama's rhetoric on the campaign trail and the pledges that USTR Kirk made during his confirmation process in early 2009.

According to USTR Kirk, although "new trade agreements can still open markets to US goods and services . . . [the United States] must also insist on respect for our rights in the global trading system, if Americans are to reap the real benefits trade has to offer." He noted that "one of the easiest ways to grow American businesses and American jobs" is to increase foreign market access and US exports to trading partners. On the subject of FTAs, USTR Kirk stated that "a trade agreement is a contract . . . and [US] trading partners can sell their goods here . . . but in exchange, they must keep their end of our bargains." He stated that the Obama Administration will place a heavier focus on enforcing US trade agreements through the following "concrete new measures":

- Working with US trading partners to implement enforceable labor standards and immediately identifying and investigating labor violations "before they can disadvantage American workers;"
- Working with Congress and across the federal government to respond to public concerns on trade issues;
- Deploying US resources "more effectively to identify and solve problems" as related to a trading partner's compliance to a trade agreement, and "pursuing legal remedies when other options are closed;"
- Consistently monitoring US partners' trade practices;
- Strongly addressing sanitary and phytosanitary barriers "across the board, as well as on a case by case basis;"
- Addressing technical barriers to trade, such as technical regulations and standards that restrict US exports; and
- The continued use trade remedies, such as antidumping and anti-subsidy laws "to correct distortions of trade."

Reaction to USTR Kirk's speech was mixed. Congressional Democrats and labor union officials lauded the initiatives presented in the speech, but according to several observers, "are seeking more action than words." Sen. Sherrod Brown (D-OH) opined that it should not take a "major address" to conduct trade enforcement because "trade enforcement is part of the US Trade Representative's job." Executive Director of the Alliance for American Manufacturing Scott Paul noted that "the success of [Kirk's] efforts

are going to be measured on a daily basis, and President Obama's determination [in the Section 421] case on imported consumer tires from China in September will be one of the first major tests.”

Meanwhile, US business groups were mostly quiet on USTR Kirk's speech, noting that although the address represents the first major speech in months by an Administration official on US trade policy, USTR Kirk did not provide the “updated” US trade policy that the Administration has been working on for the past several months. USTR Kirk acknowledged this in his address, noting that “President Obama has committed to a new approach to trade – one that rejects protectionism and creates opportunities at home and abroad” even though he has not yet provided a specific plan of action on how this “new approach” will work. Myron Brilliant, US Chamber of Commerce Senior Vice President for International Affairs, stated that US trading partners should adhere to a rules-based trading system and uphold their agreements but he added that “the United States should live up to its own agreements, such as allowing Mexican trucks to cross the border as laid out in the North American Free Trade Agreement [NAFTA].” Other business groups also urged the Administration and Congress to work together to move the pending FTAs with Colombia, Panama and Korea forward under the assumption that the United States “can't enforce agreements until we have them.”

It is unlikely that USTR Kirk's speech on trade enforcement will surprise the trade community. The Obama Administration has been repeating the initiatives and messages as included in the July 16 speech since it entered into office in January 2009, and USTR Kirk's speech only solidifies what Administration officials have been promising to implement for the past several months. Some observers have pointed out that USTR Kirk's speech fails to detail how USTR and other US government agencies will implement these new trade enforcement initiatives and what specific steps the Administration will take to reach the goals as included in the speech. More details are likely to emerge when the Administration unveils its “new trade agenda,” although it still is unclear when President Obama will make such an announcement given the Administration's focus on domestic issues and silence on trade issues. Other observers, similar to Mr. Brilliant, have noted that a stronger US focus on trade enforcement and market access will only be successful when the United States complies with the same trade rules.

EU Trade Commissioner Ashton and USTR Kirk Agree to Increase Bilateral Cooperation on Resolving Key Outstanding Trade Disputes

On July 13, 2009, European Union Trade Commissioner Catherine Ashton met in Washington, DC with United States Trade Representative (USTR) Ron Kirk to discuss EU-US bilateral trade relations. The two officials on this occasion issued a formal statement that indicated their intention to further increase

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bilateral cooperation on resolving outstanding trade disputes between the EU and the United States, and agreed to focus “in the coming weeks” on the following issues in particular:

- Ways in which to facilitate the lifting of the EU requirement that all US shipments of long grain be tested prior to entry into the EU for the presence of genetically modified (GM) rice product LL601, which has been approved in the United States but not in the EU;
- Potential steps to address World Trade Organization (WTO) dispute DS160 on Section 110(5) of the US Copyright Act, which according to the EU is inconsistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPs Agreement”) because it allows US public places to, under certain conditions, play copyrighted Irish music without the payment of a royalty fee;
- The substantive agenda and format for a practical dialogue on the trade implications of EU and US chemicals regulations; and
- The Trade Barrier Regulation report on US Internet gambling laws that the European Commission issued on June 10, 2009 and which concluded that US laws on remote gambling and their enforcement against EU companies constitute an obstacle to trade that is inconsistent with WTO rules.

The statement follows up on an earlier meeting between both officials in March 2009, where the officials formally listed (i) bilateral engagement on specific trade disputes, (ii) a successful conclusion of the WTO Doha Round, and (iii) a more efficient bilateral dialogue under the Transatlantic Economic Council (TEC) as priority areas for future EU-US cooperation. As such, Ashton and Kirk also briefly addressed the latter priority at their latest meeting, whereby they focused on how the parties could improve cooperation on preventing disputes as well as on necessary preparations for the next TEC meeting, which will likely take place in October 2009. The officials concluded that they will take stock of progress on these various issues at their next bilateral meeting, which will take place in September 2009.

Department of Commerce Approves First Indian Company for VEU Program

On July 2, 2009, the US Department of Commerce’s (DOC) Bureau of Industry and Security (BIS) published a final rule in which it approved the first Indian company to participate in its Validated End-User (VEU) program. The VEU program permits civilian companies in India, who pass a rigorous national security review and agree to strict follow-on compliance obligations, to receive under a VEU-specific authorization items subject to certain US export controls. The companies could previously receive such

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items under individual DOC licenses. DOC has also implemented a VEU program for China, and to date, five entities in China have been granted permission to participate in the program.

In its July 2 final rule, BIS amended the US Export Administration Regulations (EAR) to include the initial list of end-users for India approved to receive exports, re-exports and transfers of certain items under the VEU program. In particular, the rule amends the EAR to authorize one VEU in India – in this case, GE India – and identify the respective eligible items for export and re-export to that VEU's facilities. Such items include material and aerospace technologies, and explosive detection equipment, software and technology. The rule became effective **July 2, 2009**.

BIS established and implemented the VEU program on June 19, 2007. On October 2, 2007, BIS published a rule making companies in India eligible to participate in the VEU program. It is expected that the VEU program will facilitate increased high-technology exports to eligible companies in India. According to the DOC, the VEU program is beneficial to foreign companies because it reduces “the paperwork that must be completed for shipment authorization, thereby allowing export on demand as well as resource savings.” VEU's may obtain eligible items that are on the Commerce Control List without having to wait for their suppliers to obtain export licenses from BIS. A wide range of items are eligible for shipment under the VEU program. The VEU program may be used by foreign re-exporters in addition to US exporters. VEU authorization also does not have an expiration date, unlike the two-year validity period of an export license.

Free Trade Agreements

Free Trade Agreements Highlights

USTR Requests Comments on Labor Issues and Pending US-Colombia FTA

In a July 29, 2009 Federal Register (FR) notice, the Office of the United States Representative (USTR) requested public comments on the pending US-Colombia Free Trade Agreement (FTA) (74 FR 37759-37760). According to the FR notice, USTR is conducting a review of labor-related issues in the context of the US-Colombia FTA and seeks comment “to assist USTR in working with the Colombian government to secure continued progress in ensuring that Colombia's workers can fully exercise their fundamental labor rights.”

According to USTR, “issues have been raised about the extent to which Colombians are able to exercise their fundamental labor rights, as referenced in the FTA.” USTR is consequently assessing what steps can be taken, along with the Government of Colombia, to address these labor issues. Specific questions for comment are:

- Are there gaps in Colombia's labor law regime, including its enforcement mechanisms, with respect to providing for the fundamental labor rights of its citizens?
- Is the Colombian government taking adequate steps to protect Colombia's workers from acts of intimidation or violence that impede the exercise of their fundamental labor rights?
- Has the Government of Colombia made sufficient progress in its efforts to prosecute the perpetrators of violence and intimidation against unionists exercising their fundamental labor rights?

USTR is also inviting the public to comment on other issues they believe relevant to the FTA, including the potential benefits of the agreement.

Written comments are due by September 15, 2009 and should be submitted electronically at: <http://www.regulations.gov>.

USTR Requests Comments on KORUS FTA

In a July 27, 2009 Federal Register (FR) notice, the Office of the United States Trade Representative (USTR) requested public comments on the pending US-Korea Free Trade Agreement (“KORUS FTA”) (74 FR 37084). USTR is assessing how and to what extent the KORUS FTA “makes progress in

achieving the applicable purposes, policies, priorities, and objectives” of the Bipartisan Trade Promotion Authority Act of 2002 (*i.e.*, the agreement achieved between Members of Congress and the Bush Administration on US trade objectives and policy). Specifically, USTR seeks comments regarding:

- How implementation of the FTA will affect trade between Korea and the United States, in general and with respect to particular goods or services;
- Economic costs and benefits to US workers, farmers, ranchers, businesses and consumers of removal of tariffs and non-tariff barriers affecting trade between the United States and Korea; and
- Any additional steps that one or both governments should take to address specific concerns regarding the FTA and the bilateral trade and investment relationship.

Written comments are due by **September 15, 2009** and should be submitted electronically at: <http://www.regulations.gov>.

Fifth ACTA Negotiating Round Focuses on Enforcement Practices, Transparency, Generic Medicine and Drugs

From July 16-17, 2009, the United States and several of its trading partners held the fifth negotiating round of the Anti-Counterfeiting Trade Agreement (ACTA) in Rabat, Morocco. Participants in the latest round of negotiations included Australia, Canada, the European Union, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland, and the United States. The next round of negotiations is scheduled to take place in November in South Korea. Participants have agreed that the negotiators' main goal is to complete the ACTA talks by Spring 2010.

The fifth round of talks focused on international cooperation, enforcement practices, institutional issues, and transparency matters, among other things. According to sources, participants also discussed the issue of generic medicine and drugs. Sources report that the European Union wants the ACTA to require all countries negotiating the deal to increase seizures and prosecute companies who produce generic drugs illegally for sale elsewhere, including in countries which are not even engaged in ACTA negotiations. Critics to this proposal assert that these rules could encourage pharmaceutical companies to file “frivolous patents to maximize profit while simultaneously discouraging parallel imports.”

To date, ACTA participants have not yet published the draft agreement. Several sources report that at the latest negotiating round, the United States and other participants discussed the possibility of releasing a draft ACTA later this year, and other sources are reporting that the group of nations may release a draft

ACTA after the November round. In the lead-up to the November round, USTR plans to hold a series of meetings with stakeholders regarding the ACTA and its various provisions.

USTR formally announced the negotiation of the ACTA with several US trading partners on October 23, 2007. As noted, participants in the ACTA negotiations include Australia, Canada, the EU, Japan, Jordan, South Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland, the United Arab Emirates, and the United States. The trading partners are seeking to negotiate the ACTA to strengthen international cooperation, enforcement practices, and participants' legal frameworks to address counterfeiting and piracy. "Key elements" under discussion among the negotiating countries (as summarized by the Office of the USTR in April 2009), include: (i) **objectives**, including the establishment of "international standards for enforcing intellectual property rights in order to fight more efficiently the growing problem of counterfeiting and piracy;" (ii) **enforcement**, including collection and analysis of statistical data and other relevant information such as best practices concerning infringement of intellectual property rights; (iii) **civil enforcement**, including providing courts or other competent authorities with the authority to order/take specific actions when it is established that a party has violated intellectual property laws, and the rules on when and how to use those powers; (iv) **criminal enforcement**, including the cases for which Parties to the ACTA should provide for criminal procedures and penalties; (v) "**border measures**" which refer to actions that customs and other competent authorities would be authorized to take to prevent goods that infringe intellectual property rights from crossing borders; and (vi) **international cooperation**.

The latest ACTA negotiating round represents what little activity the USTR is involved in as related to US trade agreements. The pending US Free Trade Agreements (FTAs) with Colombia, Panama and South Korea have seen (and will likely continue to see) little movement, and USTR has not announced the Obama Administration's "new trade policy" much less any possible new FTA negotiations. Although some observers point to the ACTA activity as a sign that the Administration is beginning to move on trade, others opine that the ACTA itself does not represent a "true trade agreement" and instead serves as more of a broad agreement on intellectual property rights (IPR), consequently indicating that the Obama Administration may still see trade as a "backburner" issue.

USTR, Department of State Request Public Comments as Part of BIT Review

In a July 14, 2009 Federal Register (FR) notice, the Office of the United States Trade Representative (USTR) requested public comments on the Obama Administration's review of the US model Bilateral Investment Treaty (BIT) (74 FR Page 34071). As we had previously reported, the Department of State

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and USTR, co-leads of the US BIT program, have begun a review of the model BIT to “ensure that [it] is consistent with the public interest and the overall US economic agenda.” Specifically, the Department of State and USTR are questioning whether the current model text, last updated in 2004, “achieves these objectives or whether there are changes that should be made.”

As part of its review, the Department of State and USTR are soliciting written comments and will hold a public meeting. Written comments submitted under this notice are due by **July 31, 2009**. The public meeting will be held on **July 29, 2009** at the Department of State; representatives from the Department of State and USTR will chair the meeting. Interested parties wishing to speak at the meeting are requested to provide a written summary of their remarks in advance. Please refer to the FR notice for full details on submitting written comments and testifying at the public meeting.

As we had previously reported, the State Department has already created a panel to conduct a formal review of investment provisions in US Free Trade Agreements (FTAs) and the US model BIT. The panel will make its recommendations directly to the State Department’s Advisory Committee on International Economic Policy (ACIEP) and will hold hearings to develop the recommendations. According to US officials, “during the review, the United States will continue technical discussions in the BIT negotiations and informal discussions that have already begun, including those with China, India and Vietnam.” Details of the panel composition and its work have not been released, although several reports note that American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) Policy Director Thea Lee and Covington & Burling Senior Adviser Alan Larson will serve as co-chairs of the panel. No timeline has been established for the recommendations to be issued.

The lack of detail surrounding the investment review panel and the review of FTA and BIT investment provisions makes it difficult to forecast how the review will affect any BIT or FTA negotiations in which the Administration is involved. US officials have stated that the United States will continue technical discussions in the BIT negotiations and informal discussions that have already begun with China, India and Vietnam, but some observers question how the results of the panel review and the panel’s recommendations will affect these talks.

Multilateral

WTO, UNEP Issue Joint Report on Trade and Climate Change

Summary

On June 26, 2009, the World Trade Organization (WTO) and the United Nations Environment Programme (UNEP) released a joint report on Trade and Climate Change. The report examines the science of climate change; the “economics” of climate change; multilateral efforts to tackle climate change; and national climate change policies and their effect on trade. We analyze herein the report’s discussion on the implications of climate change on trade.

The full WTO/UNEP climate change report is available at:

http://www.wto.org/english/res_e/booksp_e/trade_climate_change_e.pdf.

Analysis

I. General Observations on Trade and Climate Change Measures

The report states that greenhouse gas emissions will continue to rise unless significant changes to current policies are made, and warns that it is in the long-term interest of the global economy for climate change to be mitigated as important economic sectors will be strongly affected by climate change, consequently affecting trade. Additionally, the report states that freer trade may play a large role in helping to alleviate climate change. The WTO/UNEP report explains that “opening up trade and combating climate change can be mutually supportive towards realizing a low carbon economy.” According to the WTO and UNEP, free trade can have a positive impact on emissions of greenhouse gases in a variety of ways including accelerating the transfer of clean technology and the opportunity for developing economies to adapt those technologies to local circumstances. Additionally, the report notes that rising incomes linked with freer trade can also change social dynamics and aspirations by providing wealthier societies with the opportunity to demand higher environmental standards, including ones on greenhouse gas emissions. Furthermore, the report states that more open trade coupled with policies to combat climate change can catalyze global innovation for green technology.

The report also states that there appear to be two likely general effects of climate change on international trade:

- Climate change may alter countries’ comparative advantages and lead to shifts in the pattern of international trade. The report specifies that this effect may be stronger on those countries whose

comparative advantage stems from climatic or geophysical reasons whereas countries or regions that are more reliant on agriculture may experience a reduction in exports “if future warming and more frequent extreme weather events result in a reduction in crop yields;” and

- Climate change may increase the vulnerability of the supply, transport and distribution chains. For example, transportation routes in permafrost zones “may be negatively affected by higher temperatures, which would shorten the length of time that roads would be passable during winters,” and transportation on inland waterways could be disrupted during droughts or other weather events.

II. Specific Observations on Trade and Climate Change Measures

The report discusses at length “price and market mechanisms to internalize environmental costs of greenhouse gas emissions,” particularly **internal taxes on greenhouse gas emissions** (including “carbon taxes”) and **emission trading schemes** (also known as “cap-and-trade systems”). According to the report, these domestic climate change policies alter the relative prices of traded goods covered by such schemes and taxes and may affect conditions for international trade. Specifically, the report addresses concerns about competitiveness and “carbon leakage” arising from climate change policies, and discusses “border adjustments” that various countries have considered as part of their climate change policy. The report also discusses WTO rules that may be relevant to domestic efforts to internalize environmental costs of greenhouse gas emissions. We briefly analyze each of these sections below:

- **Carbon Tax.** According to the report, a carbon tax may be levied on two main points of taxation or application: (i) consumers and (ii) producers, and the report notes that most countries implementing a “carbon tax” levy it directly on consumers through a tax on fuel consumption “at the pump” or use a combination of a tax on carbon dioxide emissions and a tax on energy use.
- **Emission Trading Schemes.** The report describes a cap-and-trade system as fixing a cap on total emissions, translating this cap into “allowed emissions” or allowances to cover emissions, and creating a market in which these allowances can be auctioned and/or traded, at a price set by the market (*i.e.*, a tradable allowance system). According to the report, the market price of these allowances “should reflect the marginal cost of emission reductions and thus encourage emitters to reach a specified emission reduction target.” The method of allocating allowances may have important implications on the distribution of costs among covered companies as well as how costs are passed on to consumers, and therefore may influence the potential loss or gain in competitiveness for certain industries.

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- **Allowances.** The report distinguishes two points of application of allowances: (i) an “upstream” design where the overall limit on emissions applies to producers and importers of fossil fuels and to producers of other energy sources and (ii) a “downstream” design where the emission limit applies to sources of emissions such as end-users of fossil fuels and actual emitters of greenhouse gases. In the “upstream design,” the emission costs are passed on to consumers in the form of higher prices. An upstream system has relatively low administrative costs because it regulates the emissions of a limited number of entities. The report notes, however, that an “upstream” design may be insufficient to encourage end-user energy efficiency and emission reductions. The report notes that a “downstream” design could create an efficient market for emission trading although it notes that there are higher administrative costs because of the potentially large numbers of participants.
- **Competitiveness.** The report states that unilateral carbon taxes and emission trading schemes can alter and affect the competitiveness of firms and sectors, especially if environmental policies in different countries impose different levels of costs on competing firms, thus creating a price advantage for firms located in countries with “less stringent” environmental policies. The effects of climate change measures on the competitiveness of sectors depend on several factors, including the specific characteristics of the sector and the design of the regulation. The report notes, however, that studies to date have generally found that the effects on competitiveness of environmental regulations, including climate change policies, are relatively small because the costs of compliance with a regulation are a relatively minor component of a firm’s overall costs.
- **Carbon Leakage.** According to the report, a large part of the climate change-trade debate centers on “carbon leakage” and the risk of creating “carbon havens” (countries with less stringent carbon policies which attract carbon-intensive industries, thereby endangering the global effectiveness of carbon-constraining environmental policies) and a risk of job relocation resulting from the relocation of industries to countries where climate change mitigation policies are less costly. The report questions whether the concerns over carbon leakage and competitiveness impact warrant government intervention in the form of “border adjustments.”
- **Border Adjustments.** Border adjustments, which the report defines as “measures aimed at offsetting possible asymmetries in competitiveness and preventing carbon leakage” has proved a contentious subject in the climate change debate. In the context of a carbon tax, the paper states that a border adjustment can take the form of a tax on imported products or a refund of domestic taxes when products are exported. In the context of an emission trading scheme, the paper states that a border adjustment can be linked to an emission trading scheme through requirements on

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imports from countries that do not impose similar emission reduction obligations on their industries; in such cases, importers would have to submit emission allowances or certified emission credits to cover the emissions created during the manufacturing process of the imported good, or they would be allowed to purchase allowances in the domestic emission trading markets on equal terms with domestic industries. The report also states that other types of border measures have also formed a part of the climate change discussion, including an import charge or a higher tariff, especially for energy-intensive products; raising a countervailing duty or an anti-dumping duty on imported goods produced in countries that do not impose climate change related regulations; and imposing a tax on certain means of international transport based on their evaluated emissions.

- **Relevant WTO Rules.** According to the report, “several WTO disciplines may come into play if a carbon/energy tax or an emission trading scheme and/or their adjustments affect international trade,” notably the General Agreement on Tariffs and Trade (GATT) and the national treatment principle (which could be relevant in cases where a climate change related regulation is applied differently to domestic and foreign producers). The report also notes that other disciplines and WTO agreements may be also relevant to climate change related measures such as the prohibition of quantitative restrictions and disciplines on technical barriers to trade, including the Agreement on Subsidies and Countervailing Measures (SCM) (which could be relevant to emission trading schemes if allowances are allocated free of charge, for example).

III. Conclusions

According to the report, its main purpose is to provide readers with an understanding of the debate on the linkages between trade and climate change. The report concludes that “trade intersects with climate change in a multitude of ways . . . due to the innumerable implications that climate change may have in terms of its potential impacts and the profound regulatory and economic changes that will be required to mitigate and adapt to these impacts.” The report states that “addressing climate change represents one of the most urgent challenges of our time, and requires concerted action at both the national and the international level.” According to the report, national mitigation and adaptation measures (such as a carbon tax or emission trading scheme) demonstrated the wide range of policy measures available to governments to help reduce greenhouse gas emissions but also “highlights the impact that this complex web of measures might have on international trade and the multilateral trading system.”

Outlook

The debate on climate change measures and their implications for international trade has grown more active in recent months, especially with the recent passage by the US House of Representatives of a bill that would, among other things, establish a cap-and-trade system in the United States (it should be noted that the proposed US system is not the first of its kind as the EU has operated its European Union Greenhouse Gas Emission Trading System (EU ETS) since January 2005). The proposed US emission trading scheme and other existing cap-and-trade systems as well as price-based mechanisms, such as a carbon tax on fossil fuels or a tax on energy, are at the center of the debate on climate change and trade, but, as noted in the WTO/UNEP report, “more empirical work on the economic implications and environmental effectiveness” of such measures is still necessary in order to develop a better understanding of the measures’ direct and indirect impact on global trade. In the short-term, domestic measures as related to climate change are likely to continuously spur debate, especially on the extent to which certain industrial sectors may be economically affected by carbon-constraining domestic policies, and on the issue of “carbon leakage” and its role in protecting competitiveness in certain industrial sectors. The application of border measures and/or border adjustments will also provide contentious debate, especially among WTO Members. It may be difficult for a WTO Member to apply a border measure as related to climate change because of the difficulties involved in applying such measures, including “the challenge of precisely assessing the quantity of carbon dioxide emitted during a product’s production . . . and the difficulty of measuring the economic impact of an emission trading scheme on a particular industry.” The report suggests that further research on methodologies to address these difficulties could be useful to policymakers. In addition, any debate on trade and climate change would be incomplete without a discussion on the vast array of GATT and WTO rules that deal specifically with many of the economic and regulatory instruments under discussion or already in use. However, as the report notes, “the relevance of WTO rules to climate change mitigation policies, as well as the implications for trade and the environmental effectiveness of these measures, will very much depend on how these policies are designed and the specific conditions for implementing them.”

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Multilateral Highlights

WTO DSB Establishes Panel in US-China Poultry Ban Dispute

On July 31, 2009, the World Trade Organization (WTO) Dispute Settlement Body (DSB) established a Dispute Settlement Panel to examine US measures affecting poultry imports from China (DS392). The DSB formed the panel after China submitted a second panel request; on July 20, 2009, the United States had blocked China's first request for the formation of a panel. Under WTO rules, the United States was unable to block China's second panel request.

According to Chinese officials, on March 11, 2009, President Obama signed into law a USD 410 billion dollar omnibus spending bill (H.R. 1105). The legislation includes several trade-related provisions that, among other things, prohibit poultry products to be imported into the United States from China. China contends that Section 727 of the omnibus spending bill continues the US ban on Chinese poultry and states that none of the funds made available in the legislation may be used to establish or implement a rule allowing poultry products to be imported into the United States from China. According to Chinese officials, "this resulted in a complete ban on the import of poultry products from China into the United States . . . thus violating various WTO rules." China argues that the poultry ban violates Articles I:1 and XI:1 of the WTO General Agreement on Tariffs and Trade (GATT) and Article 4.2 of the WTO's Agriculture Agreement. Chinese officials also contended that the United States "had entirely closed the door to China's poultry products" since 2007 through a number of annual omnibus appropriation acts and a series of related measures.

Both sides have attempted to address the poultry ban in previous months. China has raised the issue bilaterally with the United States on several occasions, including at the last WTO trade policy review of the United States. At a March 12, 2009 WTO Agriculture Committee meeting, China criticized the Obama Administration for signing the omnibus appropriations bill that continued the poultry ban. Chinese officials opined that "any trainee with a preliminary knowledge of the WTO disciplines will tell you that this section violates the basic rules of the WTO including the MFN." Chinese officials also noted that the US action "flies in the face of a Group-of-20 directive to nations issued last year to refrain from establishing new protectionist actions during the current economic crisis." China argued that its poultry industry meets international sanitation and safety standards and that its producers currently export poultry to leading markets, including the EU and Japan. Both sides agreed to dispute settlement consultations, which were held on May 15, 2009; the consultations, however, failed to settle the dispute.

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US reaction to China's panel request was negative, and US officials argued that "in line with the Agreement on Sanitary and Phytosanitary Measures (SPS), the United States permits imports of poultry products from all countries for which a determination of equivalence has been made." US officials argued that "China challenged the way in which the US was responding to China's request for a determination of equivalence" and it noted that US authorities are working to ensure that the response to China's request for determination of equivalence was based on "an objective, science-based consideration of all the relevant evidence in a way that was consistent with the agreements." US officials argued that there was no basis for the claims made by China in its panel request, and they also noted that the measure identified by China (*i.e.*, Section 727 of the omnibus spending bill) would expire at the end of the current US fiscal year on September 30, 2009, and that a public debate was underway in the US Congress as to what conditions, if any, should be attached to the use of appropriated funds in the next fiscal year with respect to the import of poultry products from China.

WTO Releases Latest Report on Members' Trade-Related Actions in Face of Economic Crisis

On July 1, 2009 the World Trade Organization (WTO) released a report on trade-related developments in the period from March 1 – June 19, 2009. The report states that the world economy has witnessed "further slippage" toward protectionism, but the use of "high-intensity" trade-restricting measures remains largely contained. The report, the third in a series of periodic analyses of WTO Members' trade policies, predicts that anti-dumping cases could increase amid the ongoing economic turmoil, and warned that "buy local" provisions in national stimulus plans could distort trade.

The most recent WTO report indicates that a total of 119 trade measures have been reported by 24 countries and the European Union to the WTO Secretariat. Of those measures, 83 were regarded as being restrictive. Since the WTO's last report, the number of trade restricting or distorting measures announced or implemented has exceeded the number of trade liberalizing measures by a factor of more than two. At the same time, the WTO has revised downward its trade outlook, predicting a decline in volume of 10 percent, compared to the previously expected 9 percent drop. Exports of developed economies are now forecast to fall this year by about 14 percent while developing economies will likely see a seven percent drop and will remain vulnerable due to a lack of credit.

The report also predicted that the WTO will see an upswing in Member nations' use of trade remedies, including anti-dumping actions, countervailing duties, and safeguards. On anti-dumping, the report cited evidence of a correlation between a handful of macroeconomic indicators and the pace with which countries investigate each others' export pricing policies. Safeguard actions and countervailing duties

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have also grown in popularity this year, according to the report, but use of the measures remains below previous peaks.

The report predicts that developing countries, some very dependent on exports for their growth models, will continue to feel the pain of the downturn, with lower income countries being especially hit by the still frozen or overly expensive credit markets. In addition, the report states that investments are being pulled out of the developing world, remittances are dropping and the largest banks are being pushed to lend domestically, leaving borrowers in poorer nations without access to financing.

The report also expresses concern over “buy local” provisions in some Members economies’ economic plans which may lead to trade distortions if left in place after the crisis. Member governments have announced a number of new stimulus measures and sector-specific support programs since March 2009, policies that the WTO acknowledged could be critical to stimulating the consumer demand needed to propel economic recovery. The report warns that “buy local” provisions written into government stimulus packages may skew demand and hinder open competition. The report recommends that that sector-specific support programs should be phased out as soon as possible.