



June 2009

Japan External Trade Organization
WTO and Regional Trade Agreements
Monthly Report

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Summary of Reports

United States

Cato Institute Holds Policy Forum and Hill Briefing on “Restoring the Pro-Trade Consensus”

On April 28, 2009, the Cato Institute held a Policy Forum on “Restoring the Pro-Trade Consensus.” The focal point of the forum was the recently published paper “Audaciously Hopeful; How President Obama Can Help Restore the Pro-Trade Consensus,” written by **White & Case LLP International Trade attorney Scott S. Lincicome** and **Director of the Center for Trade Policy Studies at the Cato Institute Daniel Ikenson**. In addition to Ikenson, the forum featured **General Counsel of the United States Trade Representative (USTR) Tim Reif** and **Economic Program Director of Third Way Anne Kim**.

United States Highlights

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

- Administration Announces Several Decisions Related to GSP, ATPA Preference Programs
- House of Representatives Approves American Clean Energy and Security Act of 2009
- Trade Reform, Accountability, Development and Employment (TRADE) Act Introduced in US House of Representatives
- ITC Issues Affirmative Determination in Section 421 Investigation of Imports of Chinese Tires
- House of Representatives Passes “Cash for Clunkers Measure” Included in Supplemental Military Funding Bill
- Commission Proposes to Impose Definitive Anti-Dumping Duties on Imports of US Biodiesel
- Sens. Schumer, Graham Re-Introduce Currency Manipulation Legislation
- EU Trade Official Says Doha Round Should Remain “Number One Priority” for Further Liberalization of EU-US Trade and Investment

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Free Trade Agreements

AEI Hosts Panel on US-Korean Relations, Explores Pending KORUS FTA

On June 9, 2009, the American Enterprise Institute (AEI) hosted a conference with panelists from the public and private sectors to discuss the military threats to the US-Korea alliance, the economic dilemmas arising from the global financial crisis, and lingering disagreements over trade. Keynote addresses were made by Representative Kevin Brady (R-TX) and former Ambassador John Bolton. We review herein the panel discussion, including any references made to the pending US-Korea (KORUS) Free Trade Agreement (FTA).

Free Trade Agreements Highlights

- US Commerce Secretary Locke, Korean Minister of Knowledge Economy Lee Meet to Discuss US-Korean Trade Issues
- USTR Kirk Announces Plan to Move Forward With ACTA Negotiations
- United States and Mongolia Announce Launch of Negotiations for Transparency Agreement
- Obama Administration Slows Progress on US-Panama FTA In Light of Other Domestic Concerns
- United States, Egypt Plan to Strengthen Trade Ties, Work Around Existing TIFA

Multilateral

Multilateral Highlights

- US Files WTO Complaint Against China Over Export Restraints on Raw Materials
- USTR Kirk Announces US Commitment to Successful Conclusion of Doha Negotiations at Cairns Group Ministerial

Reports in Detail

United States

Cato Institute Holds Policy Forum and Hill Briefing on “Restoring the Pro-Trade Consensus”

Summary

On April 28, 2009, the Cato Institute held a Policy Forum on “Restoring the Pro-Trade Consensus.” The focal point of the forum was the recently published paper “Audaciously Hopeful; How President Obama Can Help Restore the Pro-Trade Consensus,” written by **White & Case LLP International Trade attorney Scott S. Lincicome** and **Director of the Center for Trade Policy Studies at the Cato Institute Daniel Ikenson**. In addition to Ikenson, the forum featured **General Counsel of the United States Trade Representative (USTR) Tim Reif** and **Economic Program Director of Third Way Anne Kim**.

Separately, on June 15, 2009, the Cato Institute held a Hill Briefing which featured House of Representatives member Henry Cuellar (D-TX). At the Briefing, Rep. Cuellar discussed the current Congress and his outlook on the future of Trade.

We review below the paper, the forum and Rep. Cuellar’s remarks.

Analysis

On April 28, 2009, the Cato Institute held a Policy Forum in which the recently published paper “Audaciously Hopeful; How President Obama Can Help Restore the Pro-Trade Consensus” was discussed. The focus of the paper is the rise, subsequent fall and future of a pro-trade consensus in America. **Director of Center for Trade Policy Studies of the Cato Institute Dan Griswold**, who acted as moderator, began the forum with the admission that trade is a “controversial subject.” Beyond that, the paper states that there is “reason for grave concern about the direction of US trade policy.” In light of these claims, the speakers discussed the once prosperous and now divisive trade policies of the United States, as well as ways the Obama Administration can restore a pro-trade consensus.

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On June 15, 2009, Rep. Henry Cuellar (D-TX), spoke at the Cato Institutes Hill Briefing on restoring the pro-trade consensus. At the briefing, Rep. Cuellar discussed his past experiences with trade legislation and presented his views about the future of trade.

I. Audaciously Hopeful; How President Obama Can Help Restore the Pro-Trade Consensus

A. Former Pro-Trade Consensus

At the outset of the paper, Ikenson and Lincicome note that “[n]ot too long ago, Bush administration officials spoke optimistically about a free-trade zone from Alaska to Tierra del Fuego, and a world free of industrial tariffs by 2015. US trade policy held promise as a tool to reduce global trade barriers and to achieve greater economic integration and growth.” The authors point out that the predilection of the post-WWII America was for the “engagement, negotiation, and cooperation between the United States and other nations.” But in recent years, according to the paper, trade has come to be incorrectly associated with having only negative impacts on the United States. Further, Ikenson and Lincicome maintain that “[t]rade has been a crucial component of US and world economic growth for over six decades. But during the past decade – and particularly in the last few years – trade has become partisan, rancorous, and divisive.”

B. Current Downward Trends in Trade Views

Ikenson and Lincicome argue that there appears to be at least one plausible reason for this switch in philosophy: with the Republican majority in the 108th and 109th Congresses, Democrats were alienated by their constituents across the aisle when it came to advancing trade policy; as a result, many Democrats from that period who subsequently controlled the 110th Congressional trade agenda were less than enthusiastic about continuing the legislation imposed on them by the prior pro-trade Republican majority. The paper maintains that the Democratic controlled Congress of the final two years of the Bush Administration had its “committed opponents who [were] intent on halting – if not reversing – 60 years of trade expansion.” But this predisposition quickly spread from Congress to the American public; the authors claim that “anti-trade rhetoric spewed from the halls of the 110th Congress and onto the 2008 presidential campaign trail, helping spook Americans about trade and globalization.”

C. Reasons for Recent Trends

In their paper, Ikenson and Lincicome claim that the recent anti-trade sentiment has been fueled by three myths, which have helped to perpetuate the negative position on trade.

The first myth put forward by Ikenson and Lincicome is that “US manufacturing is in decline and that trade and globalization is to blame.” One main reason for this, the paper claims, is that those opposed to trade have prevented an honest dialogue about the connection between US manufacturing and trade. Further, the authors maintain that “[a]ccording to nearly every financial statistic that is relevant to evaluating the health of the manufacturing sector, it was unequivocally thriving until the onset of the recent US financial crisis and recession.”

The second myth, according to the paper, is that the American public believes that exports are a positive, imports are a negative and the trade account is the barometer of an economy’s success. The public yearning for rising exports and a trade surplus appear to be an incorrect goal, according to Ikenson and Lincicome. In their paper, the authors point out that “Japan has run a trade surplus every year since 1980. Japan ran its largest trade surpluses in the 1990s, a decade often referred to as Japan’s ‘lost decade.’” The authors continue by noting that with similar results having occurred in France, “[t]here simply isn’t much real-world evidence supporting the notion that a trade surplus leads to economic growth or that a trade deficit stymies it.”

According to Ikenson and Lincicome, the final myth perpetuating the current anti-trade consensus is that “the United States is losing at trade because its trade partners cheat with impunity, and that better enforcement of our current trade agreements would help reverse myths one and two.” The authors continue that “[t]here is no doubt that our trade partners have violated trade rules over the years, both knowingly and unknowingly. And so has the United States. But the implication that violations are so endemic as to require daily, high-profile enforcement efforts is misleading.” The paper stresses that simply enforcing agreements is not the only answer. Ikenson and Lincicome note that “[e]nforcement is an important part of the rules-based system of trade. But enforcement efforts are more nuanced than some policy-makers care to admit.... All of the harping has conferred undue significance on the issue and has reinforced damaging perceptions about trade and our trade partners.”

Ikenson and Lincicome admit that the anti-trade consensus that started in Congress that was passed on to the American public and then reinforced by the myths above poses a difficult hill to climb to reverse these attitudes. The paper states that “[u]nfortunately, the heated partisan debate about trade over the past several years – and the tactics used to spread skepticism across the country – probably precludes resumption of an ambitious agenda of US-led trade liberalization during the next couple years. But it certainly should not preclude the steps necessary to start rebuilding the pro-trade consensus.”

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II. Policy Forum Speakers Views on Potential Methods to Reclaim the Pro-Trade Consensus

Each speaker at the Cato Institute Policy Forum suggested ways in which a pro-trade agenda can once again become the mainstream view.

At the forum, Kim outlined the conclusions found in the Third Way publication entitled “Why Lou Dobbs is Winning,” which is also referenced in Ikenson and Lincicome’s paper. Kim notes that in order for the pro-trade advocates to find out what they’re doing wrong, they must first find out what’s working for the “other side.” The Third Way publication analyzes the three lessons learned from those who are opposed to free-trade. First, Kim states that “the advocate’s tactics stink.” She noted that those in favor of free-trade argue through the use of numbers such as data, while the non-advocates argue using emotions such as factory closings and job losses. The former uses hard data in their arguments, while the latter refers to factories shutting down and jobs being eliminated. Kim admits that while the numbers may be more solid and relevant to the debate, the advocates simply cannot compete with the appeals to emotions, regardless of which is based more in fact or which applies more to America as a whole. Second, Kim refers to the publication’s finding that pro-trade advocates are tapping the wrong problem. Third Way’s piece claims that advocates are “guilty of a failure of vision” and notes that “[i]n the post-World War years, [the] goal was preserving the peace; during the Cold War, the goal was fighting communism. Today, the overall goal of American global engagement is far less clear, and trade’s role in achieving that goal is murky.” At the forum, Kim admitted that pro-trade advocates are seen as “missing the point” on trade. While they see trade as trade, the non-advocates see trade as a much larger issue, such as jobs and the economy. The “other side” sees trade as getting something done and without the clear ideas which arose after the World Wars and the Cold War, pro-trade advocates simply can’t convey a compelling message to their adversaries. And lastly, Kim acknowledges that, unlike the non-advocates, those who believe in pro-trade simply don’t offer anything to the middle class. The publication points out that “[m]iddle-class economic anxiety is widespread and legitimate. And fairly or not, much of the blame for this anxiety is landing squarely on trade.” If pro-traders are to advance their ideals, Kim points out that advocates must ease the fears and change the views of the middle-class. Kim’s suggestion for an answer to the three findings of the Third Way publication was that those who believe in pro-trade must “capture and articulate a vision of what trade is for... and why it’s worth fighting for.”

In their paper, Ikenson and Lincicome claim that “pro-trade advocates have failed to make a convincing and durable case for why free trade is superior to the alternatives.” Reif further elaborated on that point at the forum by detailing the elements necessary to explain trade to non-advocates and restore their confidence in trade policy. The first element is to rebuild the infrastructure for trade within the states.

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Reif argues that everyone shares a collective responsibility in moving the agenda further. Second, Reif admits that there must be more enforcement of US trade agreements. Negotiations should not be the end of the agreement and, according to Reif, oversight is necessary to ensure trade stability and fairness. And lastly, Reif claims that there must be more “openness” in the government with respect to trade. He believes that there needs to be an open door so both the process and progress can be available for everyone to track.

Aside from just documenting the rise and subsequent fall of the pro-trade consensus, Ikenson and Lincicome also discuss in their paper specific ways to restore this consensus. The first way to do this, they argue, is to repair perceptions. For example, at the forum, Ikenson discussed the misconception that just because products are “made” in another country, this does not mean the US does not still have a role in its production. Ikenson uses the example of the iPod when he states that many “higher value jobs” are done in America despite the parts being “snapped together” in other countries. Ikenson and Lincicome’s paper takes the iPod example further by explaining that “[i]mports of iPods from China – like many (perhaps most) high-tech products imported from China – support high-paying American jobs in engineering, design, marketing, manufacturing, and logistics, as well as jobs in the transportation and retail sectors.”¹ The paper’s suggested second method of restoring the pro-trade consensus consists of taking specific initiatives. Two suggested initiatives include the need to “reinforce for Congress the fact that a unilateralist trade policy undermines a multilateralist foreign policy” and the need to “craft a proactive agenda for implementation when trade consensus reemerges.”

All speakers at the forum agreed that it will not be an easy task to sway the public opinion on trade, but Ikenson and Lincicome note in their paper that the first step towards succeeding in this goal is for the “congressional leadership... to afford President Obama the opportunity to start repairing the damage and to begin changing minds about trade within Congress and across the country.”

¹ The authors use two studies to provide support for this position; the first is an International Trade Commission study that found “50 percent of value of a typical container of imports from China is Chinese value-added. The other half comprises material and labor from other countries. [Additionally, a] 2003 Stanford University study found Chinese value-added to be even smaller – at around 35 percent.” Looking beyond just iPods and other imported products not fully “Made in America,” the paper stresses that it can not properly be concluded that the US simply does not produce goods anymore. Quite to the contrary, the authors state that the US produces “higher-value products that aren’t typically sold in retail stores – like airplanes, advanced medical devices, sophisticated machinery, and biotechnology products.”

III. Views of Current Congressman on Potential for Return to Pro-Trade Consensus

House of Representatives member Henry Cuellar (D-TX) discussed his views on current trade policy at the Cato Hill Briefing held on June 15, 2009. Rep. Cuellar noted from the outset that he had a unique and personal perspective on trade being that his state of Texas is home to one of the largest service ports in the country, located in Laredo. From his experiences with this port, he noted that “jobs are created by trade.” Rep. Cuellar further expressed his support for trade by stating that the majority of countries that prosper have always had some form of trade.

But despite his support of trade, Rep. Cuellar noted that in order to move any pro-trade agenda forward, Democrats in Congress, who currently hold a majority, must be sure to include their Republican counterparts in the process. Consistent with the claims made by Ikenson and Lincicome, Rep. Cuellar noted that he learned the lesson of including the minority when he was a member of Congress under the Bush Administration. He stated that during this period, the Republicans in majority left the Democrats out of the decision making process and then expected them to sign the new legislation presented to them. From that experience, he believes that “certain issues have to have [a] bi-partisan approach.”

Outlook

It is of particular note that a Democrat, who was in Congress during the Bush Administration, has come out so strongly in favor of restoring a pro-trade consensus. In their paper, Ikenson and Lincicome referred to this very group, which included Rep. Cuellar, when they discussed the Republican majority’s alienation of Democrats and the subsequent repudiation that resulted in the current Democratically-controlled Congress. The authors outlined this problem and Rep. Cuellar acknowledged that he and his Democratic constituents must not make the same mistakes that led to a loss of pro-trade policies.

It appears evident to Ikenson, Lincicome, the speakers of the policy forum and Rep. Cuellar that with the advent of both the newly elected Congress and Administration, there is, for the first time in years, the strong possibility for a restoration of a pro-trade consensus in America. But those who believe that pro-trade policies are on the horizon need not merely hope for such a change; as Griswold pointed out at the onset of the forum, it was in Barack Obama’s own book, “The Audacity of Hope,” written three years ago, that Obama proclaimed:

“[t]here’s no doubt that globalization has brought significant benefits to American consumers. It’s lowered prices on goods once considered luxuries, from big-screen TVs to peaches in winter, and increased the purchasing power of low-income Americans. It’s helped keep inflation in check, boosted returns for the millions of Americans now invested in the stock market, provided new

markets for US goods and services, and allowed countries like China and India to dramatically reduce poverty, which over the long term makes for a more stable world.”

And once elected, Ikenson and Lincicome noted that “[t]he president’s repudiation of the ‘Buy American’ language in the so-called stimulus package was a commendable start.” But the authors maintain that more than suggestive language is needed to move the pro-trade agenda forward. In order to do this, they state that the president should “be familiar with the lingering misperceptions and political circumstances that have driven the backlash against trade.” At the forum, Ikenson proclaimed that restoring the pro-trade consensus “should be a priority for the sake of the economy and foreign policy.”

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United States Highlights

Administration Announces Several Decisions Related to GSP, ATPA Preference Programs

On June 30, 2009, President Obama submitted a report to Congress regarding the Andean Trade Promotion Act (ATPA) in which he issued his decision to continue Ecuador's ATPA benefits despite disputed policies for handling investment disputes. The report specifically states, however, that the Administration will monitor Ecuador's investment policies to ensure that Ecuador continues to meet its obligations under the US-Ecuador Bilateral Investment Treaty (BIT). The report notes two cases in Ecuador that many business groups have their shifted attention to with regard to Ecuador's investment policies. Although the report does not specifically name the two cases, according to many observers, the two cases likely concern an environmental lawsuit against Chevron for polluting the Amazon rain forest, and the 2006 termination of a contract with the Occidental Petroleum Corporation by Ecuador, which expropriated Occidental's assets.

In his report, President Obama also declined to reinstate Bolivia's benefits under the ATPA program. On November 25, 2008, President Bush signed a proclamation suspending Bolivia's designation as a beneficiary country under the ATPA. The suspension took place on December 15, 2008. According to President Bush's statements, Bolivia's suspension was the result of its failure to cooperate with the United States on counter-narcotic efforts, a criterion of ATPA. Observers note that the Bush Administration's move to suspend Bolivia from the ATPA stemmed from Bolivia's expulsion of US Agency for International Development (USAID) and US Drug Enforcement Agency (DEA) personnel from areas in Bolivia where illegal coca production takes place; coca is the main ingredient used to make cocaine. The former Bush Administration noted, however, that if Bolivia makes improvements on efforts to cooperate with the United States on counter-narcotic efforts, the United States would have the option to issue a proclamation re-designating Bolivia as a beneficiary country under the ATPA. It appears that the Obama Administration feels that Bolivia has not done enough to improve its efforts to cooperate with the United States on counter-narcotic efforts, consequently denying it ATPA benefits.

Separately, on June 30, 2009, the Office of the United States Trade Representative (USTR) announced the results of its 2008 review of the Generalized System of Preferences (GSP) program. We review below some of the results of the review.

- **New Additions.** USTR added two new agricultural products to the list of products eligible for GSP benefits. These are: (i) potatoes, uncooked or cooked by steaming or boiling in water, frozen; and (ii)

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spinach, New Zealand spinach and orache spinach (garden spinach), uncooked or cooked by steaming or boiling in water, frozen.

- **Denied Petitions for GSP Removal.** USTR denied petitions for the removal of GSP benefits for several products, including polyethylene terephthalate – PET resin from India (3907.60.00) and polyethylene terephthalate – PET resin from Indonesia (3907.60.00). A petition to remove GSP benefits for polyamide-6 (nylon 6) from Thailand had already been withdrawn by the petitioner.
- **Competitive Need Limitation Waivers.** USTR granted competitive need limitation (CNL) waivers to several products, including: (i) full grain unsplit bovine (not buffalo) & equine leather, not whole, w/o hair on, nesoi, fancy, prepared after tanning or crusting, not 4114 from Argentina; and (ii) copper, stranded wire, not electrically insulated, not fitted with fittings and not made up into articles from Turkey. USTR also revoked a CNL waiver for ferrosilicon chromium from Kazakhstan.
- **De Minimis Waivers.** USTR granted *de minimis* waivers to approximately 109 products, including agricultural products, chemicals, and other manufactured goods.
- **GSP Redesignation.** USTR appears to have denied all petitions for GSP redesignation for a broad array of products from several different countries.
- **Removed Products.** USTR excluded 12 products from the GSP program based on CNL being exceeded. These products silver jewelry, zinc, aromatic and nonaromatic drugs, auto parts, and nonadhesive plates from India; animal and vegetable fats from Argentina; railway parts and rare gases from the Ukraine; mackerel from Thailand; and chromium trioxide from Turkey. The Obama Administration determined that these 12 products are now sufficiently competitive in the US market and consequently no longer need GSP treatment.

The full results of the 2008 GSP Review are available at: <http://www.ustr.gov/about-us/press-office/press-releases/2009/june/obama-administration-completes-2008-annual-review-gen>.

House of Representatives Approves American Clean Energy and Security Act of 2009

On June 26, 2009, the House of Representatives narrowly passed the American Clean Energy and Security Act of 2009 (ACES, H.R. 2454) by a vote of 219 to 212. Two-hundred eleven Democrats and eight Republicans voted for the bill, while 44 Democrats and 168 Republicans opposed it. There also were three no-votes.” Congressional observers opine that the narrow passage of the bill means that the Senate debate on the bill will be contentious and its ultimate outcome uncertain.

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On May 15, 2009, House Energy and Commerce Committee Chairman Henry Waxman (D-CA) and Subcommittee on Energy and Environment Chairman Edward Markey (D-MA) formally introduced the ACES, and since that time, the House Committees with jurisdiction over the bill's provisions reviewed and negotiated the legislation. House Members were given until the morning of June 25 to file floor amendments to the ACES, and House leaders brought a revised bill to the floor on June 26 which reflected compromises reached in Committee. Such compromises include amendments on subsidies for plug-in hybrid vehicles to domestic manufacturers and a series of changes on the potential application of tariffs on imports from countries that do not accept limits on carbon emissions:

- Recent talks between the House Ways and Means Committee and House Energy and Commerce Committee have eliminated a refundable energy tax credit for low-income families included in the version of the bill marked up by the Energy and Commerce Committee on May 21, 2009.
- The bill now offers an “Energy Refund Program” that would deliver monthly security benefits via government programs, such as Social Security.
- The bill provides financial subsidies to automobile manufactures to develop and produce plug-in electric drive vehicles in the United States. **Manufacturers of plug-in vehicles developed or produced outside the United States will not be eligible for financial assistance.**
- The bill provides rebates to energy-intensive, internationally competitive industries for their costs incurred under the bill. The bill states that no later than June 30, 2011, the Administrator of the Environmental Protection Agency (EPA) will publish a list of industrial sectors eligible for the rebates. Furthermore, from February 1, 2013 and every four years afterwards, the EPA will update the list of eligible industrial sectors. The rebates, designed to prevent “carbon leakage” (i.e., an increase in carbon dioxide emissions from manufacturing in one nation as a result of an emissions reduction in another) will no longer be distributed when such distribution is no longer necessary to prevent carbon leakage from eligible industrial sectors.
- The bill provides that the President must submit a report by January 1, 2018 to Congress on the effectiveness of the emissions rebates at mitigating carbon leakage and recommendations on improving the program's purposes. By June 30, 2022, and every four years thereafter, the President will determine for each economic sector whether more than 70 percent of global output is from countries that :
 - Are parties to international agreements requiring binding national commitments, or within the eligible industrial sector;

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- Have annual energy or greenhouse gas intensities comparable or better than the equivalent United States sector; and
 - Have implemented climate change and emissions policies equivalent to at least 60 percent of the costs of United States manufacturers.
- Where the President's determines that more than 70 percent of global output from a given economic sector does not meet these criteria, the Environmental Protection Agency (EPA) must impose "international reserve allowances" (i.e., carbon tariffs) on imports of products in that sector, unless both chambers of Congress vote to uphold a Presidential decision not to impose the measures. Where the President decides to impose the tariffs (or Congress rejects the President's recommendation not to impose them), the EPA is to promulgate rules establishing an appropriate price and distribution system for the new border measures. The tariffs will be paid by importers and would be required for importation into the United States of any covered primary product as determined by the EPA. The purpose of the program would be to offset any lingering competitive disadvantages for domestic manufacturers *vis-à-vis* their international competitors resulting from the new law's direct and indirect costs.

H.R. 2454 now moves to the Senate for its consideration. While President Obama praised the passage of ACES, he spoke out against the bill's international trade provisions. President Obama noted that the United States must be wary not to send any protectionist signals to trade partners during such a deep economic crisis. On the other hand, the House ignored the administration's previous statements against carbon tariffs, and it is unlikely that the President would veto a climate change bill that included similar border measure provisions.

At this stage, it is unclear when the Senate will consider the bill, although Congressional sources opine that several different Senate Committees will likely want to review the language in the House-passed bill and discuss their own amendments, thus making the process of Senate consideration of the bill a likely long one that is certain to include contentious debate between Democrats and Republicans on issues such as the creation of the international reserve allowance program and the language on a multilateral climate change agreement. Congressional sources note that Senate Majority Leader Harry Reid (D-NV) and Chairwoman of the Senate Committee on Environment and Public Works Barbara Boxer (D-CA) are already working with Democrats to get a climate change bill moving through the Senate. Chairwoman Boxer plans to start marking up a bill after Congress returns from the Fourth of July recess, and Sen. Reid intends to bring the bill to the Senate floor for consideration in the Fall.

Trade Reform, Accountability, Development and Employment (TRADE) Act Introduced in US House of Representatives

On June 24, 2009, Mike Michaud (D-Maine), Chairman of the House Trade Working Group, introduced the Trade Reform, Accountability, Development and Employment (TRADE) Act (H.R. 3012) with a total of 106 cosponsors. Sen. Sherrod Brown (D-Ohio) is expected to introduce a companion bill in the Senate. The House bill sets out detailed criteria regarding the provisions that new and pending trade agreements must include. To the extent that existing trade agreements do not meet these requirements, the bill provides for renegotiation of these agreements. The bill also would replace the President's fast track authority with a new process. Rep. Michaud introduced a nearly identical bill last year with a total of 74 cosponsors. Although that bill did not receive any action, Michaud and his supporters cite the increase in cosponsors and the new administration and Congress as reasons why they believe that the new bill might receive more consideration. Despite Michaud's optimism, most observers still believe that passage of this legislation is very unlikely.

The TRADE Act bill requires that, no later than 270 days after enactment and every 2 years thereafter, the Government Accountability Office (GAO) must conduct a comprehensive review of all trade agreements in force at the time of the review and submit a report to a Congressional Trade Agreement Review Committee that would be established under the bill. The report must assess the economic, environmental national security, health, safety and other effects of the trade agreements, and must include information regarding the countries that are parties to the trade agreements (e.g., form of government, respect for labor rights and human rights, laws regarding environment, labor and intellectual property). The bill also requires that the GAO include recommendations for renegotiating trade agreements that fail to meet the bill's requirements and for negotiations with respect to new agreements.

The legislation sets forth the provisions that must be included in trade agreements. It sets out requirements regarding the following: (1) labor standards; (2) human rights standards; (3) environmental and public safety standards; (4) food and product health and safety standards; (5) services provisions; (6) investment provisions; (7) procurement standards; (8) intellectual property requirements; (9) agricultural subsidies; (10) trade remedies and safeguards; (11) dispute resolution and enforcement provisions; (12) technical assistance; (13) exceptions for national security and other reasons; (14) federalism; and (15) taxation.

Under the bill, the President must submit a plan to the Congressional Trade Agreement Review Committee for renegotiating each trade agreement that is in effect on the date of enactment to bring the

agreement into compliance with the bill's requirements. The bill provides for the Committee to consider and vote on the plan.

The bill also proposes to replace the President's fast track authority to negotiate agreements that Congress can only approve or reject without any alterations with a mechanism that would introduce significant Congressional involvement in the process of negotiating and approving free trade agreements. This new mechanism would include readiness criteria for the President to use in determining whether a country is a suitable negotiating partner, more frequent consultations with Congress during trade negotiations, binding negotiating objectives and requirements outlining what must be included in a trade agreement based on the bill's criteria, a process for review and certification by the Congress to ensure that the negotiating objectives in the bill have been met, and a requirement that a trade agreement be approved by a majority vote in both Houses of Congress before the President may sign the trade agreement.

The bill has the support of organizations such as Public Citizen's Global Trade Watch, environmental groups and all major unions, including the AFL-CIO and Change to Win. Business groups have strongly opposed the legislation. The US Chamber of Commerce issued a statement that it "opposes the so-called TRADE Act as a risky move at a time of great hardship for US workers" and stated that, "By calling into question America's existing trade agreements with countries around the globe, it potentially places at risk millions of American jobs sustained by the hundreds of billions of dollars in annual US exports to our trade agreement partners."

ITC Issues Affirmative Determination in Section 421 Investigation of Imports of Chinese Tires

On June 18, 2009, the US International Trade Commission (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 (Commissioners Shara Aranoff, Charlotte Lane, Irving Williamson, and Dean Pinkert voted in the affirmative, and Commissioners Daniel Pearson and Deanna Tanner Okun voted in the negative), 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. As a result of the affirmative determination, the ITC will send its report, including its remedy proposal, to President Obama and the Office of the United States Trade Representative (USTR) by 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.

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The ITC's determination is in response to the petition filed on April 20, 2009 by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW). According to the USW, a surge of consumer tire imports from China has been a "major factor" in the decline of domestic tire production in the United States and the loss of thousands of US jobs in the industry. The petition alleges that consumer tire imports from China increased by 215 percent by volume between 2004 and 2008 and calls for the imposition of a 21 million unit annual quota on imports that would increase by five percent during the quota's second and third years.

The requested safeguards are authorized under Section 421 of the Trade Act of 1974 ("the Trade Act"), as amended, which permits the United States to impose import relief measures when products from China are imported in increased quantities or under other conditions that cause or threaten to cause "market disruption" to domestic producers of like or directly competitive products. The provision was added to the Trade Act by the US-China Relations Act of 2000 as part of China's accession to the World Trade Organization (WTO). Before any China-specific safeguards may be imposed under Section 421, the ITC is required to conduct an investigation to determine whether market disruption has occurred based on a consideration of the volume of subject imports, their effect on prices in the US market, and their effect on the domestic industry. Market disruption exists whenever the subject imports are increasing rapidly, so as to cause "material injury" to the domestic industry. The tires investigation is the fifth, out of seven total Section 421 investigations in which the ITC has determined that a market disruption has occurred.

The ITC must transmit its determination on market disruption to the President and USTR by June 19, 2009. USTR has the authority to enter into an agreement with China to remedy the market disruption. The 60-day consultation period for concluding such an agreement begins no later than five days after USTR receives the ITC's affirmative determination.

The final step that the ITC must take is to recommend a remedy to the President and USTR. Parties are permitted to submit final comments to the ITC regarding the appropriate remedy by June 24, 2009. The ITC must submit its report and remedy recommendation to the President and USTR by July 9, 2009. Once the ITC submits its report, USTR has 20 days to publish a notice giving importers, exporters, and other interested parties the opportunity to comment on the appropriateness of the ITC's proposed measures. Within 55 days of receipt of the ITC's report (*i.e.*, by September 2, 2009), USTR shall make a recommendation to the President concerning what action, if any, to take to prevent or remedy the market disruption. The President has 15 days after receiving the USTR's recommendation to decide whether to take the USTR's recommendations, alternative action, or do nothing.

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Section 421 permits the President to reject such relief if he determines that its provision is “not in the national economic interest of the United States” and would have an “adverse impact on the United States economy clearly greater than the benefits.” As such, ultimate discretion to impose countermeasures rests with the President alone based on a balancing of the benefits of protection with the costs to the national economy.

President Obama’s safeguards decision in the tires Section 421 case is likely to prove a “litmus test” with respect to his Administration’s stance on China trade and its trade policy more generally. The imposition of safeguards under Section 421 would represent a significant departure from the policy of the previous Administration. President Bush rejected the imposition of Section 421 safeguards on all four occasions such safeguards were recommended during his tenure. As a result of these decisions, since August 2005, no further Section 421 petitions were filed until the tires case. A decision to impose safeguards would certainly anger China; Chinese officials have publicly warned the United States against the imposition of Section 421 safeguards, a move that they opine could strain US-China relations. From an industry perspective, 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 that could only serve to further anger China. Trade observers are intently watching this case because this will serve as the first real “trade test” for President Obama. 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 “punt” on this issue or avoid altogether, and his decision will have direct consequences for the US-China trade relationship and US trade policy in general. Observers comment that the imposition of safeguards is a matter of choice for President Obama on whether he chooses to impose the safeguards and anger China, thus supporting US labor unions (who back the 421 decision), or maintain the status quo on the US approach to Section 421 (as under the Bush Administration) and decide against the safeguards, thus choosing to address the trade irritants with China through other venues.

House of Representatives Passes “Cash for Clunkers Measure” Included in Supplemental Military Funding Bill

On June 16, 2009, the House of Representatives passed a supplemental military funding bill that contains a “cash for clunkers” provision similar to the stand-alone “cash for clunkers” bill that the House of Representatives passed on June 9. House and Senate conferees charged with negotiating a supplemental appropriations bill for foreign military operations (H.R. 2346) added the provision authorizing the “Consumer Assistance to Recycle and Save (CARS)” program, a plan that would provide

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consumers with vouchers of up to USD 4,500 that can be used towards the purchase of a more fuel-efficient vehicle. H.R. 2346 is similar to the “Consumer Assistance to Recycle and Save Act” (H.R. 2751) that the House passed on June 9, 2009. Both bills “provide incentives to registered owners of high polluting automobiles to replace such automobiles with new fuel efficient and less polluting automobiles.” Rep. Betty Sutton (D-OH) introduced H.R. 2751, which the House passed by a margin of 298 to 119 on June 9, 2009.

Both bills offer cash rebates in the form of a voucher to help consumers who trade in cars or SUVs with a combined fuel economy of 18 miles per gallon or less to buy more fuel-efficient vehicles. The following descriptions break down the requirements for receipt of a voucher:

- **Passenger Cars.** The old vehicle must get less than 18 miles per gallon. New passenger cars with mileage of at least 22 miles per gallon are eligible for vouchers. If the mileage of the new car is at least four miles per gallon higher than the old vehicle, the voucher will be worth USD 3,500. If the mileage of the new car is at least 10 miles per gallon higher than the old vehicle, the voucher will be worth USD 4,500.
- **Light-Duty Trucks and SUVs.** The old vehicle must get less than 18 miles per gallon. New light trucks or SUVs with mileage of at least 18 miles per gallon are eligible for vouchers. If the mileage of the new truck or SUV is at least two miles per gallon higher than the old truck, the voucher will be worth USD 3,500. If the mileage of the new truck or SUV is at least five miles per gallon higher than the old truck, the voucher will be worth USD 4,500.
- **Category 2 Trucks.** Category 2 trucks with mileage of at least 15 miles per gallon are eligible for vouchers. If the mileage of the new truck is at least one mile per gallon higher than the old truck, the voucher will be worth USD 3,500. If the mileage of the new truck is at least two miles per gallon higher than the old truck, the voucher will be worth USD 4,500.

Large vans, large pickups and work trucks are also eligible for the program, under differing requirements.

There are some differences between the two bills, however. H.R. 2751 authorizes USD 4 billion for the proposed “cash for clunkers” program whereas H.R. 2346 authorizes USD 1 billion for the proposed program. H.R. 2751 also authorizes the program to last for one year upon enactment of the legislation whereas H.R. 2346 states that the period of eligibility for use of a voucher is between July 1, 2009 and November 1, 2009.

It is unclear at this stage which version of the “cash for clunkers” provision – H.R. 2751 or H.R. 2346 – the Senate will consider or when the Senate will take up such a measure. Congressional sources opine that the “cash for clunkers” program included in the war supplemental bill has a higher chance of passage in the Senate than the stand-alone bill because the supplemental bill contains other provisions of importance to Members of Congress and because House and Senate negotiators crafted the supplemental bill thus indicating likely support from Senators for all the provisions included in the bill, including the “cash for clunkers” program. If the Senate approves the “cash for clunkers” program as included in H.R. 2346, the supplemental bill would next move to President Obama for his signature. As noted, the version of the “cash for clunkers” program in H.R. 2346 would authorize less money for the program than originally proposed in H.R. 2751 and would have a shorter eligibility period to use the vouchers than the year-long proposal that H.R. 2751 contains.

Commission Proposes to Impose Definitive Anti-Dumping Duties on Imports of US Biodiesel

On June 15, 2009, the European Commission issued a proposal for a Council Regulation to impose definitive anti-dumping (AD) duties on imports of biodiesel originating in the United States. The measures range between €68.6 and €198.0 per ton net, and will apply to imports of pure biodiesel or blends that contain by weight more than 20 percent of biodiesel, currently falling within the following CN codes:

- ex 1516 20 98;
- ex 1518 00 91;
- ex 1518 00 99;
- ex 2710 19 41;
- ex 3824 90 91;
- ex 3824 90 97.

In addition, the Commission proposed to collect definitively the provisional duties that it imposed on March 12, 2009 (*Please see W&C March 2009 EU Report*), which ranged between €23.60 and €208.20 per ton net. Amounts that were secured in excess of the definitive duties shall be released, while where the definitive duties are higher only the amounts secured at the level of the provisional duties shall be definitively collected.

The duties are the result of a complaint by the European Biodiesel Board (EBB) – which represents more than 25 percent of the EU biodiesel production – that unfair support in the US was causing “substantial adverse effects” (*Please see W&C June 2008 EU Report*). US officials noted however when the EU first initiated the AD investigation that they disagreed with the allegations, while the National Biodiesel Board (NBB) – which represents the US biodiesel industry – described the EU’s action as “a protectionist ploy” and an attempt to hide an inability to deal with real challenges such as high feedstock prices, changing government policies, and “poor business practices”. Initial indications were therefore that the duties could spark a new transatlantic trade row and the first real fight over the issue of biofuels, although the US government has thus far not issued any official statements that point to an intention to launch a counter-investigation or a legal case at the World Trade Organization (WTO).

The Regulation will enter into force the day following that of its publication in the Official Journal of the European Union, and will apply for a period of five years.

Sens. Schumer, Graham Re-Introduce Currency Manipulation Legislation

On June 12, 2009, Sens. Charles Schumer (D-NY) and Lindsey Graham (R-SC) re-introduced legislation meant to “vigorously address currency misalignments that unfairly and negatively impact United States trade.” Among other things, the “Currency Exchange Rate Oversight Reform Act of 2009” (S. 1254) would require the United States Treasury Department to identify currency misalignments in biannual reports to Congress, immediately engage countries cited in the report, and establish a series of consequences should a country fail to take action to eliminate the currency misalignment. Although not explicitly stated in the proposed legislation, the bill, according to Congressional observers, is aimed primarily at China. The announcement on S. 1254 comes on the heels of the Obama Administration’s April 15, 2009 decision not to cite China as a “currency manipulator,” despite the Department of Treasury’s view that China’s currency, the renminbi, remains undervalued.

Among other things, the “Currency Exchange Rate Oversight Reform Act of 2009,” which is identical to a bill submitted by both Senators in 2007, would:

- “Create a new overall approach to identifying currency manipulators” by requiring that the Treasury Department develop a biannual report that identifies two categories of currency misalignment:
 1. A **general category** of “fundamentally misaligned currencies” based on observed criteria;
and

2. A **select category** of “fundamentally misaligned currency for priority action” that reflects misaligned currencies caused by clear policy actions by the relevant government.
 - Require the Treasury Department to engage in immediate consultations with all countries cited in the report. For “priority” currencies, the Treasury Department would seek advice from the International Monetary Fund (IMF) as well as key trading partners.
 - Establish “important consequences” for a country immediately upon designation as a “currency manipulator” in the report, “moderately severe consequences” if consultations have not resulted in appropriate policies and identifiable actions to eliminate misalignment after 90 days, and “more severe consequences” if consultations have not resulted in appropriate policies and identifiable actions to eliminate misalignment after one year.

In announcing the bill, Sen. Graham remarked that although China has made some progress on the issue, the “clear manipulation” of China’s currency must be addressed. He further remarked that it serves both the United States’ and China’s interests to accelerate the pace of the renminbi’s appreciation in the pursuit of a “fair playing field between China and the United States on the issue of international trade.”

As we had previously reported, Treasury’s decision not to name China a currency manipulator in its April 2009 report was likely to generate angry responses from some Members of Congress, especially some Democrats who have long supported a tougher US stance against China’s alleged currency manipulation. In a March 26, 2009 letter to President Obama, several Democrats cited China’s alleged currency manipulation as one of the “most persistent and significant barriers to trade” the United States currently faces and attributed the current global economic crisis in part to imbalances caused by exchange rate manipulation. The letter urged President Obama to adopt a new approach to China that incorporates stronger US leadership in the IMF, possible dispute settlement proceedings at the World Trade Organization (WTO), multilateral negotiations with key countries, and stronger enforcement of existing US trade and exchange rate laws. Like the letter, the “Currency Exchange Rate Oversight Reform Act of 2009” appears to reflect some Members of Congress’ dissatisfaction with China’s currency practices and the Administration’s stance on the matter. At this stage, it is unclear if other Members of Congress will follow suit and introduce legislation addressing currency manipulation similar to that of Sens. Graham and Lindsey or if they will adopt a “wait-and-see” approach in observing how the Administration addresses the concerns that the two Sens. have raised. If the April 2009 Treasury Report serves as an indicator, then the Administration is unlikely to change its view that although the renminbi is undervalued, China is not a currency manipulator, although pressure from Sens. Graham, Lindsey and other legislators could spur the Administration to address the China-centric concerns through other venues, such as the WTO. Thus, the

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Administration's response to S. 1254 – which has been referred to the Senate Committee on Banking, Housing, and Urban Affairs – will serve as a litmus test for possible future currency bills in Congress.

EU Trade Official Says Doha Round Should Remain “Number One Priority” for Further Liberalization of EU-US Trade and Investment

On June 9, 2009 the Center for European Reform (CER) and the German Marshall Fund of the United States (GMF) co-hosted a conference on current priorities for the trade and investment relationship between the European Union and the United States. The meeting served to introduce the new report “Narrowing the Atlantic: The Way Forward for EU-US Trade and Investment” and featured, amongst other speakers, the European Commission's Director-General for External Trade David O'Sullivan.

In general, the report notes that both the EU and the US would benefit from a further liberalization of the transatlantic market and in particular from the removal of remaining non-tariff barriers (NTBs) to trade and investment. Focusing on ways in which to ensure such liberalization, the report argues that given the current standstill in the World Trade Organization (WTO) Doha Round, the parties could opt for the negotiation of plurilateral agreements on specific issues with other WTO Members that share an interest therein. The report stresses however that such a strategy should aim to support the multilateral system by upholding the ultimate goal of integrating any new rules that have been negotiated into the WTO-regime at the earliest opportunity. As for the possibility of bilateral initiatives between the EU and the US, the report opposes the idea of a transatlantic Free Trade Agreement (FTA) on the grounds that this would discriminate against third countries and undermine the multilateral trading system.

Commenting on the conclusions of the report, O'Sullivan acknowledged that although in general transatlantic economic integration functions “extremely well”, numerous “trade irritants” continue to exist. O'Sullivan here mentioned the specific example of the EU and the US's ongoing dispute over their alleged subsidization of Boeing and Airbus, which he believed will turn into “major conflict” when the WTO issues its panel reports on the matter in the autumn of 2009. As for ways in which to address such irritants, O'Sullivan stated that the Doha Round should remain the “number one priority” for both parties and that “there will be no post-Doha negotiating agenda”. He noted however that in order to make further progress towards the successful conclusion of the Round, the US will have to show a greater willingness to make concessions on issues such as agricultural subsidies. In addition, O'Sullivan countered US calls for a more ambitious negotiating agenda that offers more benefits in terms of real market access and argued that the parties should focus on what is currently on the table as this already offers “huge benefits”. Finally, O'Sullivan responded to a question about the possible negative impact of protectionist tendencies resulting from the current global economic and financial crisis that the international trading system is

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holding up “fairly well” and that there is a “strong consensus” that “trade is part of the solution rather than the problem”.

With regard to the alternative of achieving further liberalization through the negotiation of bilateral agreements, O’Sullivan noted that this offers an opportunity to make progress in a WTO-consistent way on issues that have been blocked in the Doha Round, as well as to address other items that are not on the multilateral negotiating agenda. He added however that he is “not a particularly big fan” of this option because such arrangements result in a proliferation of different sets of rules of origin (ROO). In addition, O’Sullivan agreed with the conclusion of the report that an FTA between the EU and the US “would not be a good idea” to address outstanding regulatory barriers to trade and investment. Instead, he urged the parties to develop a system, for example through the existing Transatlantic Economic Council (TEC), that provides medium- and long-term strategic perspectives and allows early identification and solution of potential problems. O’Sullivan acknowledged however that the latter is difficult to realize in practice, and doubted whether there exists sufficient political will in the US to develop such a system.

Free Trade Agreements

AEI Hosts Panel on US-Korean Relations, Explores Pending KORUS FTA

Summary

On June 9, 2009, the American Enterprise Institute (AEI) hosted a conference with panelists from the public and private sectors to discuss the military threats to the US-Korea alliance, the economic dilemmas arising from the global financial crisis, and lingering disagreements over trade. Keynote addresses were made by Representative Kevin Brady (R-TX) and former Ambassador John Bolton. We review herein the panel discussion, including any references made to the pending US-Korea (KORUS) Free Trade Agreement (FTA).

Analysis

On June 9, 2009, AEI hosted a conference with panelists from the public and private sectors to discuss military threats to the US-Korean alliance, the economic dilemmas arising from the global financial crisis, and lingering disagreements over trade.

Rep. Kevin Brady (R-TX), Ranking Member of the House Ways and Means Trade Subcommittee, noted that the United States is at a critical point in trade policy given the status of the global economy. Rep. Brady argued that an FTA with Korea would “even the playing field of trade” by slashing tariffs on US goods in Korea. Rep. Brady also highlighted how the KORUS FTA is the most economically important agreement in the past 16 years and he opined that by “wavering in the face of such a trade agreement,” the United States has depicted itself as an uncommitted trading partner. According to Rep. Brady, any further delay on forging an FTA with Korea has serious consequences, including, but not limited to:

- **“Loss of ground” in Korea in terms of trade.** According to Rep. Brady, bilateral trade agreements have been forged by South Korea with the European Union and Japan, and this has caused the United States to drop from first place to fourth place on the list of Korea’s major trading partners;
- **A missed opportunity to “set anchor in Asia.”** Rep. Brady noted that by not approving the KORUS FTA, the United States will miss an important opportunity to set an “anchor” in the Asian market which in turn could help provide the United States with additional economic stimulus; and

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- **Strained political relations.** Rep. Brady opined that by not moving forward with the FTA, the United States is missing an important opportunity to enhance political relations between the United States and Korea.

Rep. Brady concluded his remarks by stating that “now is not the time to be timid about trade issues,” and he called on the Obama Administration to “recognize the enormous economic and political value an FTA with Korea possesses.”

Panelists L. Gordon Flake, Executive Director of the Mansfield Foundation and Nicholas Eberstadt, Scholar at the American Enterprise Institute, shifted the focus from free trade to international relations and recent tensions around the Korean peninsula following the latest North Korean nuclear test. Flake remarked how the most recent North Korean nuclear test marks a positive change for US-Korean relations as coordinated responses to the test further “unifies the United States and South Korea against a common enemy.” Eberstadt noted the continual failure of US diplomacy to dissuade North Korea from having nuclear ambitions. Both panelists agreed that a KORUS FTA would be both economically and politically advantageous, “especially at such a pivotal moment in the Obama Administration.”

Panelist **Claude Barfield, Scholar at the American Enterprise Institute**, noted how President Obama has emerged as a passive free-trader but “needs to act on those beliefs” by submitting to Congress pending FTAs such as the US-Panama FTA and KORUS FTA. He noted, however, that passage of these agreements is difficult since President Obama has inherited a Democratic Congress that is deeply divided on the issue of trade. According to Barfield, “populist movements along with anti-globalization movements” among Members of Congress make the issue of trade a very sensitive and divisive one during a time when the Obama Administration is attempting to unify Congress in an effort to pass several domestic measures, such as health care reform. Consequently, according to Barfield’s statements, it appears that the Obama Administration is hesitant to move forward on the pending trade agreements and on other trade matters because they may prove too contentious and could disrupt the Administration’s attempts to secure a unified Congress that approves domestic Administration-led legislative efforts.

Former **Ambassador John Bolton** discussed the failure of diplomacy on the behalf of United States and South Korea to dissuade North Korea from obtaining nuclear technologies. In addition, Ambassador Bolton described how North Korea’s latest tests and the Obama Administration’s “weak response” to the testing could encourage other proliferators to also act belligerently towards the United States.

Outlook

Like the pending FTAs with Panama and Colombia, the KORUS FTA appears to have fallen victim to other domestic concerns, such as health care reform. As previously noted, the Administration's lack of action on pending bilateral agreements comes as no surprise for several observers in the trade community who had predicted at the onset of President Obama's term of office that trade would take a "backseat" to other (primarily domestic) issues in 2009 and beyond. Despite the opinions of prominent public and private sector individuals on the political and economic benefits that the KORUS FTA would provide, it is unlikely that the Obama Administration will move forward on the agreement in the short-term. Most of the discussion in recent weeks has centered on the pending US-Panama FTA, although the momentum on moving that agreement to Congress has come to a halt because of the Administration's shift in focus to health care reform and other domestic issues. Even with all the recent buzz on the Panama agreement, very little (if anything at all) was mentioned on the KORUS FTA. To date, the Obama Administration has not made any official announcements on the KORUS FTA (one large reason being that the Administration is finalizing its review of US trade policy and is developing its trade strategy for its Asian trading partners). Thus, for now, it appears the KORUS FTA will continue to hang in limbo, and will see little forward movement over the next several months. The AEI panelists all seemed to agree that the KORUS FTA might not see any serious discussion in Congress until next year. When such discussion is finally picked up by Members of Congress, the likely contentious issues that will serve as focal points will be Korea's opening up of its markets to US beef and beef products, Korea's auto market and access to that market for US automakers, and Korea's non-tariff trade barriers (NTBs).

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Free Trade Agreements Highlights

US Commerce Secretary Locke, Korean Minister of Knowledge Economy Lee Meet to Discuss US-Korean Trade Issues

On June 15, 2009, US Secretary of Commerce Gary Locke hosted a meeting with Korean Minister of Knowledge Economy Lee Youn Ho at the Department of Commerce (DOC) in Washington, DC. This was the first meeting between Secretary Locke and Minister Lee, who is accompanying Korean President Lee Myung-bak on his current US trip. Secretary Locke and Minister Lee addressed the importance of further strengthening the commercial relationship between the United States and Korea and continuing to deepen cooperation on trade and investment issues.

Secretary Locke and Minister Lee expressed support for removing barriers to trade, focusing on the status of the pending US-Korea Free Trade Agreement (KORUS FTA) and the need to work cooperatively on a successful conclusion to the Doha round of World Trade Organization (WTO) negotiations. Regarding the KORUS FTA, Minister Lee is quoted as saying that, "There are some views that the Korean (government) is working actively on the FTA issue while the United States is not showing much progress." In response, Secretary Locke reportedly said he expects to see progress in the near future as President Obama and President Lee Myung-bak have agreed to cooperate on the ratification of the FTA.

The two officials agreed that the KORUS FTA has the potential to provide significant benefits to manufacturers, service providers, farmers, ranchers and workers in the United States and in Korea. Secretary Locke stated that "the United States and Korea traded USD 83 billion in goods in 2008, a record." In addition, he noted that "despite the turmoil in the global economy, I believe that, through further mutual efforts to tear down barriers to trade around the world, we can secure a stronger future for American companies and workers."

Secretary Locke and Minister Lee also signed a Memorandum of Understanding ("MOU") on commercial cooperation. The MOU outlines three areas for enhanced bilateral cooperation: (i) trade and investment; (ii) high technology and strategic trade; and (iii) standards and research and development (R&D). The two officials also reportedly agreed to establish an industrial cooperation committee, which will implement the goals of the MOU. The committee will meet once a year, and will be chaired by ministers or vice ministers. Private companies will be permitted to participate in the committee's meetings.

USTR Kirk Announces Plan to Move Forward With ACTA Negotiations

On June 12, 2009, United States Trade Representative (USTR) Ron Kirk announced that the Obama Administration plans to move forward with the negotiation of the Anti-Counterfeiting Trade Agreement (ACTA) meant to address and combat global counterfeiting and piracy. USTR Kirk stated that the ACTA negotiations provide an opportunity to strengthen international standards for the enforcement of intellectual property rights (IPR), consequently making it harder to import and sell pirated products in the United States. USTR Kirk expressed hope that the ACTA will help safeguard innovation and creativity in the global marketplace. Participants in the ACTA negotiations plan to meet in Morocco in July to continue the ACTA discussions with the aim to complete an agreement by 2010.

USTR formally announced the negotiation of the ACTA with several US trading partners on October 23, 2007, and negotiations began in June 2008. 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. As noted, USTR seeks to negotiate the ACTA to strengthen international cooperation, enforcement practices, and participants' legal frameworks to address counterfeiting and piracy. ACTA negotiators were scheduled to meet in late March for a negotiating round, but the United States requested a delay in order to review the status of the negotiations and the US stance. During the cancelled March round, participants were scheduled to review the overall ACTA draft proposals. To date, the "key elements" under discussion among the negotiating countries (as summarized by the Office of the USTR in April), include:

- **Objectives.** According to the USTR summary of the negotiations, the ACTA initiative "aims to establish international standards for enforcing intellectual property rights in order to fight more efficiently the growing problem of counterfeiting and piracy." Specifically, the ACTA is intended to establish among the signatories agreed-to standards for the enforcement of intellectual property rights by increasing international cooperation, strengthening the framework of practices that contribute to effective enforcement of intellectual property rights, and strengthening relevant enforcement measures. The summary notes that the ACTA will be consistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPs Agreement") and will respect to the Declaration on TRIPs and Public Health.
- **Enforcement.** Areas that the enforcement practices chapter may cover include collection and analysis of statistical data and other relevant information such as best practices concerning infringement of intellectual property rights; internal coordination among competent authorities concerned with enforcement of intellectual property rights, including formal or informal public/private

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advisory groups; measures to allow customs authorities to better identify and target shipments, which are suspected to contain counterfeit or pirated goods; publication of information on procedures regarding the enforcement of intellectual property rights, and promotion of public awareness of the detrimental effects of intellectual property rights infringement.

- **Civil Enforcement.** According to the summary, civil enforcement refers to 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. Main discussion points include the authority of the judicial authorities to order injunctions which require that a party desist from an infringement and remedies.
- **Criminal Enforcement.** Under this section of the ACTA, negotiators are discussing the cases for which Parties to the ACTA should provide for criminal procedures and penalties. Issues being discussed under this heading include clarifying scope of criminal penalties; the authority to order searches and/or seizure of goods suspected of infringing intellectual property rights, materials and implements used in the infringement, documentary evidence, and assets derived from or obtained through the infringing activity; the authority of judicial authorities to order the forfeiture and destruction of the infringing goods; criminal procedures and penalties in cases of camcording motion pictures or other audiovisual works; and criminal procedures and penalties in cases of trafficking of counterfeit labels.
- **Enforcement in the Digital Environment.** This section of the agreement is intended to address special challenges that new technologies pose for enforcement of intellectual property rights, such as the possible role and responsibilities of internet service providers in deterring copyright and related rights piracy over the Internet.
- **Border Measures.** ACTA negotiators are also discussing “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. Discussion items include, among others, which intellectual property rights will be covered, and whether border measures should only apply to importations or should equally apply to the export and the transit of goods; a *de minimis* exception that could permit travelers to bring in goods for personal use; procedures for right holders to request customs authorities to suspend the entry of goods suspected to infringe intellectual property rights at the border; and measures to ensure that infringing goods are not released into free circulation without the right holder’s permission, and possible exceptions.

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- **Cooperation.** According to the ACTA summary, the agreement's chapter on international cooperation will likely address recognition that international enforcement cooperation is vital to realize fully effective protection of intellectual property rights; cooperation among the competent authorities of the Parties concerned with enforcement of intellectual property rights, consistent with existing international agreements; and capacity building and technical assistance in improving enforcement, including for developing country parties to the agreement and for third countries where appropriate.

Response to USTR's announcement to resume the ACTA negotiations was positive. EU officials stated that resumption of the negotiations "emphasizes the participants' goal to combat global infringements of intellectual property rights, particularly in the context of counterfeiting and piracy, by increasing international cooperation, strengthening the framework of practices that contribute to effective enforcement, and strengthening relevant IPR enforcement measures themselves." Japanese officials also stated that ACTA negotiators have reaffirmed the importance of information disclosure on the progress on ACTA to the public, and noted that "the Government of Japan looks to actively lead discussions with the order concerned countries with a view to concluding the ACTA as early as possible." Chairman of the Senate Finance Committee Max Baucus (D-MT) lauded the resumption decision and urged USTR to ensure that the negotiations are transparent. Ranking Member of the House Ways and Means Trade Subcommittee Kevin Brady (R-TX) echoed Chairman Baucus' statement and noted his support for the completion of the agreement. The US Chamber of Commerce stated in a press release that the ACTA "would enable the United States and its trading partners to better combat counterfeiting and piracy."

United States and Mongolia Announce Launch of Negotiations for Transparency Agreement

On June 11, 2009, United States Trade Representative (USTR) Ron Kirk and Mongolia's Minister for Foreign Affairs and Trade, Sukhbaatar Batbold announced the launch of negotiations for a United States-Mongolia Transparency Agreement. The announcement came a day after a meeting was held by USTR General Counsel Timothy Reif and Assistant USTR for China Affairs Timothy Stratford with Minister Batbold regarding the transparency of trade practices. Their discussions highlighted the importance of transparency with regard to trade and investment policies and reiterated the importance of United States-Mongolia trade and economic relations under the US-Mongolia Trade and Investment Framework Agreement (TIFA). USTR Kirk stated that an agreement setting forth mutual commitments on transparency will aid in further developing the United States-Mongolia trade relationship.

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The United States and Mongolia signed their TIFA on July 15, 2004. The TIFA created a United States-Mongolia Council on Trade and Investment that considers a wide range of issues including intellectual property rights, labor, environmental matters, non-tariff barriers, and transparency. The launch of the transparency negotiations with Mongolia represents the first time that the United States has sought to conclude a stand-alone agreement on transparency. Historically, the United States has negotiated transparency commitments only when they have acted as a component to broader agreements, such as free trade agreements (FTAs). Both USTR Kirk and Minister Batbold expressed hope that an agreement on transparency in trade related issues will assist in strengthening the United States-Mongolia trade relationship.

Obama Administration Slows Progress on US-Panama FTA In Light of Other Domestic Concerns

According to several reports, senior White House officials have stated that the Obama Administration will delay moving forward on the pending US-Panama Free Trade Agreement (FTA) until Congress passes health care reform legislation. The announcement comes only a few weeks after the Obama Administration indicated that it had made progress on the Panama FTA and that it was close to sending the bilateral agreement to Congress. Observers note that it appears that progress on the US-Panama FTA may now be slowed until domestic issues, such as health care reform, have been addressed by the Administration and Congress.

Reaction to the Obama Administration's move on the Panama agreements was mixed. Members of the trade community that support the pending agreement opined that the White House announcement does not bode well for the agreement or for US trade policy in general, although for several of them, the announcement did not come as a surprise, given the state of US trade policy and its (low) placement on the Obama Administration's list of priorities. On June 5, 2009, Chairman of the Senate Finance Committee Max Baucus (D-MT) criticized the Administration's actions, opining that the Administration did not provide his committee with advance notice of its decision to shelve the US-Panama FTA for the time being and its announcement that it would pursue new trade policy initiatives. He called for regularly scheduled meetings with the Office of the United States Trade Representative (USTR). According to Chairman Baucus, he learned about the Administration's decision on the pending agreement and its announcement on new trade policy initiatives through the media. Chairman Baucus stated that regularly scheduled meetings between the committee and USTR officials would "minimize misunderstandings and avoid surprises."

In addition to the Administration's decision to scale back on the agreement, the pending US-Panama FTA suffers from several other setbacks. The agreement continues to face criticism by US policymakers due to outstanding issues in Panama regarding labor and tax policies. According to several reports, Panama has adjusted its laws for decades in order to ensure that it has a highly competitive business climate. Panama's level of Foreign Direct Investment (FDI) has skyrocketed since legislation was passed in 1992 which established Export Processing Zones (EPZs) in a number of locations across the country. Companies operating in EPZs are exempt from all taxation on imports and exports, sales tax, and imports on capital and assets. In addition, EPZs are free from all restrictive national labor and immigration standards. These features have attracted the attention of US legislators. As we had previously reported, in a May 20, 2009 letter to President Obama, Sen. Carl Levin (D-MI) and Rep. Lloyd Doggett (D-TX) stated that approval of the US-Panama FTA should be contingent on Panama's cooperation with efforts to combat international tax evasion. The legislators stated that the Government of Panama should have to sign a tax information exchange agreement (TIEA) with the United States and pass legislation changing Panamanian law to "allow for sufficient transparency and access to financial and corporate information." (*please see our May 21, 2009 alert on the legislators' concerns for further details*) According to the legislators, a TIEA would help the US Internal Revenue Service (IRS) enforce tax laws on US companies operating in Panama. Separately, on May 21, 2009, 55 legislators signed a letter sent to House Speaker Nancy Pelosi (D-CA) arguing that the proposed US-Panama FTA should be renegotiated to "better protect American middle-class workers, consumers, farmers, and businesses." The letter argues that since the proposed US-Panama FTA was constructed before the current global recession, it is misaligned with the United States' present economic interests. The co-signers of the letter argue that the US-Panama FTA be renegotiated and that the Obama Administration should use the renegotiated FTA as an opportunity to chart a new course for trade.

It appears that the US-Panama FTA has fallen victim to other domestic concerns, such as health care reform, that the Obama Administration has decided are a higher priority. The Administration's move to halt progress on the pending agreement comes as no surprise for several observers in the trade community who had predicted at the onset of President Obama's term of office that trade would be a "backseat" issue in 2009. Although the White House is likely to respond to Chairman Baucus' calls for meetings on the pending agreement and US trade policy as a formality, it is unlikely that the Administration will once again reverse course and decide to place the US-Panama FTA in front of health care and other domestic concerns in order of priority. Thus, for now, it appears that progress on the US-Panama FTA has slowed again. Even more concerning for some members of the trade community is that even though the US-Panama FTA has been the focus of recent discussion, the Administration has said

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very little (if anything at all) on the pending FTAs with Colombia and Korea, which some observers opine will not be submitted to Congress for consideration this year.

United States, Egypt Plan to Strengthen Trade Ties, Work Around Existing TIFA

On May 27, 2009, officials from the United States and Egypt met in Washington, DC to announce plans for expanded trade relations between the two countries. United States Trade Representative (USTR) Ron Kirk and Egyptian Minister of Trade and Industry Rachid Mohammed Rachid signed a “United States-Egypt Plan for a Strategic Partnership” under which US and Egyptian officials will develop a new framework for trade and investment cooperation over the next three months. The agreement sidesteps an existing Trade and Investment Framework Agreement (TIFA) in an effort to distinguish the new strategic partnership from previous efforts between the two nations. The ultimate goal of the agreement has not yet been identified and the Administration has not yet assigned the US officials responsible for working on the plan.

The latest agreement between Egypt and the United States marks the first trade-focused meeting between the two economies since 2005 when free trade talks disintegrated due to Egypt’s resistance in discussing democratic reform coupled with their failure to join the United States in a World Trade Organization (WTO) challenge of the European Union approval system for biotechnology crops. As noted, the “United States-Egypt Plan for a Strategic Partnership” sidesteps the existing TIFA agreement which was signed in 1999 in an effort to expand the flow of trade and investment between the two nations. While the TIFA agreement remains in effect, US and Egyptian officials felt that a new approach would be more effective in mitigating long-standing trade and investment barriers between the two countries.

The new agreement has been met with mixed emotions by US business interests who perceive Egypt to be a limited market, but support easing investment restrictions in Egypt. According to several different reports, US businesses would like to see a lessening of Egyptian government restrictions on foreign investment in services sectors, particularly the easing of a rule that limits foreign equity in construction and transport services and restrictions that limit companies from hiring non-nationals above a certain percentage of their workforce. Under the new agreement, Egyptian officials aim to enhance trade by increasing exports to the United States under the Generalized System of Preferences (GSP) and to further expand the Qualified Industrial Zones (QIZ) agreement to two new zones in Egypt. The QIZ agreement between the United States, Israel, and Egypt allows exports to enter the United States duty-free if 35 percent of the value of that good is produced in the QIZ and the product contains a minimum of 10.5 percent Israeli content. Although the “United States-Egypt Plan for a Strategic Partnership” is being

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hailed as a positive development in diplomatic and economic relations with Egypt, specific plans for implementation and economic goals are yet to be identified.

Multilateral

Multilateral Highlights

US Files WTO Complaint Against China Over Export Restraints on Raw Materials

On June 23, 2009, the United States formally requested World Trade Organization (WTO) dispute settlement consultations with the People's Republic of China regarding China's export restraints on nine raw materials. The nine materials at issue are bauxite, coke, fluorspar, magnesium, manganese, silicon metal, silicon carbide, yellow phosphorous and zinc. They are key inputs for a number of downstream products in the steel, aluminum and chemical sectors. The EU also requested WTO consultations on the same matter.

In announcing the move, United States Trade Representative (USTR) Ron Kirk stated that the United States filed the case because of concerns about China's "conscious policy to create unfair advantages for Chinese industries that use these raw materials." In particular, the US request asks for consultations on China's use of export quotas, export duties and other export restraints with respect to the nine raw materials. Kirk noted that "China appears to be restricting the exports of these materials at the expense of US industries that need" them and in violation of explicit WTO rules prohibiting such restrictions.

In announcing the complaint, Kirk stated that although the United States wants to cooperate with China and advance an economic relationship through dialogue, America is also committed to enforcing global trade rules using all resources available, including WTO dispute settlement. He stressed that WTO disputes are a part of the normal relationship between mature trading partners, and that this case should not be construed as evidence of rising tensions between the two countries. Kirk also emphasized that the request for consultations would hopefully lead to a negotiated solution, such that the United States would not need to proceed to the next step of requesting a WTO panel to examine the issue.

This is the eighth WTO dispute against China brought by the United States and the first one by the Obama administration. China has brought four WTO disputes against the United States. Given the Obama administration's emphasis on enforcing bilateral and multilateral trade agreements, this case could be the first of many WTO complaints filed by Obama's USTR if other trade problems cannot be resolved through diplomatic channels. On the other hand, the current WTO complaint over Chinese export restraints is the result of a longstanding bilateral dispute between the United States and China. President Obama may be under pressure to be seen as "getting tough" on China by congressional

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Democrats who have assailed his about-face on trade since the 2008 campaign. Thus, the new US complaint should not be interpreted as a strong signal that the Obama administration intends to keep its promise on trade enforcement by dramatically increasing the number of unilateral, bilateral or WTO disputes against US trading partners.

USTR Kirk Announces US Commitment to Successful Conclusion of Doha Negotiations at Cairns Group Ministerial

On June 9, 2009, United States Trade Representative (USTR) Ron Kirk announced that the United States is committed to seeing the World Trade Organization (WTO) Doha negotiations successfully concluded. The announcement came at the conclusion of the 33rd Cairns Group Ministerial Meeting in Bali, Indonesia. While in Bali, USTR Kirk met with a number of Cairns Group ministers and other attendees to discuss US agricultural trade policies. USTR Kirk stated that a successful conclusion to the Doha Round will mean an ambitious and balanced result with new market openings for all, coupled with significant contributions to global economic recovery and long-term economic growth and development. USTR Kirk further stated that while the progress to date on the Doha Round should not be ignored, it will likely take “quiet and informal work” by ministers and senior officials to get the negotiations moving forward once more. USTR Kirk did not officially announce whether the United States was ready to jump back into the negotiations, although several sources have noted that USTR is almost complete with its review of US trade policy and could make an announcement on a Doha resumption shortly.