



November 2009

**Japan External Trade Organization**  
WTO and Regional Trade Agreements  
Monthly Report

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## Summary of Reports

### United States

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#### China and United States Convene 20th Session of JCCT

From October 28-29, 2009, China and the United States convened the 20th session of the Joint Commission on Commerce and Trade (JCCT) in Hangzhou, China. At the meeting, the two sides held discussions on a wide range of trade and investment issues, and signed eleven agreements to increase dialogue and strengthen cooperation on these issues. The two governments also agreed to cooperate on initiatives in the areas of the environment, transparency, global distribution services, and standards. The next JCCT is scheduled to take place in the United States in 2010. We review below the main highlights of the most recent JCCT meeting.

#### House Ways and Means Trade Subcommittee Explores Preference Program Reform

On November 17, 2009, the House Ways and Means Trade Subcommittee held a hearing on US preference programs and how to reform the Generalized System of Preferences (GSP) and Andean Trade Preferences Act (ATPA) programs. GSP and ATPA are scheduled to expire on December 31, 2009, unless Congress extends the programs as it has done over the past several years. The Trade Subcommittee invited government officials and members of the private sector to testify at the hearing.

#### *United States Highlights*

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

- Legislators Call for DOC Action on China's Alleged Currency Manipulation
- Rep. McDermott Introduces New Partnership for Trade Development Act of 2009, Expanding Expiring Preference Programs
- Senator Lifts Hold on Deputy USTR Nominee
- Senate Environment and Public Works Committee Approves Senate Climate Change Bill Over Republican Opposition
- Legislators Urge Administration Support for Currency Reform for Fair Trade Act
- Senate Finance Committee Holds Confirmation Hearing for DUSTR Nominee

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## Free Trade Agreements

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### *Free Trade Agreements Highlights*

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- US and India Meet to Discuss Bilateral Issues, Launch New Trade and Investment Initiatives
- President Obama Announces US “Engagement” in TPP FTA Process
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## Multilateral

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### *Multilateral Highlights*

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- China Blocks First Requests for Dispute Panel to Rule on Chinese Export Restrictions for Various Raw Materials
- WTO DSB Forms Panel to Rule on US Challenge on EU Measures Affecting US Poultry Meat and Poultry Meat Products
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## Reports in Detail

### United States

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#### China and United States Convene 20th Session of JCCT

##### Summary

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##### Analysis

###### I. Background

The US and Chinese governments established the JCCT in 1983 as an annual high-level government-to-government mechanism to improve commercial ties and resolve trade disputes. Both sides expanded the dialogue in 1997 to include sub-ministerial and working group-level dialogues that continue throughout the year to address specific issues such as intellectual property rights (IPR), medical devices and pharmaceuticals, steel and high technology and strategic trade. China and the United States convened the last JCCT dialogue in September 2008 in California.

On October 28-29, 2009, Chinese Vice Premier Wang Qishan and US Secretary of Commerce Gary Locke and United States Trade Representative (USTR) Ron Kirk co-chaired the 20th JCCT meeting in Hangzhou, China. China's delegation included a full range of ministers and vice-ministers from the Ministry of Commerce, Ministry of Agriculture, National Energy Bureau, General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), Ministry of Environment, and the Ministry of Industry and Information Technology (MIIT). The US delegation included the US Ambassador to China, the Acting Director of the US Trade and Development Agency, and officials from the Departments of Commerce, Treasury and State in addition to USTR officials.

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During the meeting, the two sides discussed a wide range of trade and investment issues, including agriculture, distribution services, energy and environment, export control, government procurement, health care, IPR, product safety, travel and tourism, among others, and signed a number of agreements to increase dialogue and strengthen cooperation to address these issues. The discussions yielded concrete outcomes in agriculture and government procurement.

### **II. Agriculture**

At the 20th JCCT meeting, the two sides exchanged technical and scientific information on agricultural issues and sought better cooperation and coordination on agriculture. China announced its intent to reopen the Chinese market to US pork products and live swine after imposing restrictions on these products in May 2009 due to the outbreak of the H1N1 flu virus. The United States placed a high priority on its pork access into China during the JCCT meetings; consequently, China's announcement was seen as significant progress for the United States at this JCCT meeting. The United States announced its plan to review China's food safety law and inspect poultry plants before allowing imports of Chinese poultry products, and to find solutions to address China's concerns on the inspection and quarantine of Chinese agricultural products. Both sides also briefly discussed China's avian influenza-related restriction on US poultry and China's ban on US beef. Both sides signed a Memorandum of Understanding (MOU) on Cooperation in Agriculture, which renews the Joint Committee on Cooperation in Agriculture and creates more opportunities for bilateral cooperation on agriculture.

### **III. Distribution Services**

Both sides agreed to hold a global distribution services forum to address growing travel distribution services in China, including computer reservation system technology. China is still in the process of concluding its licensing procedures for certain qualified direct-selling services companies.

### **IV. Energy and Environment**

China agreed to remove its 70 percent local content requirement on wind turbines. Both sides signed an MOU on supporting the launch of a China-US Energy Cooperation Program (ECP)<sup>1</sup>. Both sides also agreed to hold the second China-US Environmental Industries Forum in October 2010, a second China-US E-Scrap Recycling Summit in May 2010, and a green building standards seminar by March 2010.

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<sup>1</sup> The ECP is a public-private partnership to commercialize clean energy solutions and focuses on smart grid development, renewable energy, energy-efficiency, and clean energy technologies.

### **V. Export Control and Investment**

Export controls have always been a top agenda item for China at the JCCT, and at the most recent meeting, the United States expressed its willingness to cooperate with China on reforming its export control regime and finding solutions to address China's concerns on US export controls and the investment environment for Chinese enterprises. The United States welcomed investments from Chinese enterprises and committed to grant fair treatment to Chinese enterprises, including state-owned enterprises (SOEs). Both sides signed an MOU on Intent to Promote Bilateral Investment.

### **VI. Government Procurement**

China committed to issue rules to require that products produced by foreign invested enterprises (FIEs) in China are treated as domestic products, thereby making FIEs eligible to participate in government procurement. China also committed to submit a revised offer "as early as possible" in 2010 to join the World Trade Organization (WTO) Government Procurement Agreement (GPA)<sup>2</sup>. China became a GPA observer upon its WTO accession in 2001 and submitted its initial offer in December 2007. Both sides agreed to establish a multi-agency working group to discuss issues on government procurement and purchases made by SOEs.

### **VII. Health Care**

China made several key commitments on medical devices and pledged to consider and accept overseas testing results and approvals. China designated the PRC State Food and Drug Administration (SFDA) as the regulator for medical devices recalls. China also committed to adopt a risk-based approach that will not require clinical trials for all medical devices, consider accepting overseas results of clinical trials in application for local trial exemption, accept prior approval documents issued by foreign countries to satisfy any prior approval registration requirements, and consider exempting local test on samples of products if manufacturers demonstrate compliance with international standards and provide sound scientific evidence.

For pharmaceuticals, China committed to further strengthen its supervision and implementation of active pharmaceutical ingredients (APIs) and counterfeit pharmaceuticals through: (i) establishing a Drug Master File System; (ii) imposing record-keeping requirements for API manufacturers and sellers; and (iii) regulating unregistered Chinese companies advertising and marketing APIs at foreign trade show and on

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<sup>2</sup> The GPA is a voluntary, plurilateral agreement with 40 signatory countries and regions, aimed at building an open, transparent and non-discriminatory government procurement market across signatory countries. China committed to joining the arrangement "as soon as possible" following accession in 2001.

the Internet. China also appointed the SFDA as the only contact point for China's interagency efforts to fight counterfeit drugs, and shared information of such interagency efforts with the US Food and Drug Administration (FDA). Both sides also agreed to continue discussions on pharmaceutical data protection.

### **VIII. IPR**

China agreed to impose maximum administrative penalties on internet IPR infringement and announced the launch of a four-month campaign to clamp down on Internet piracy. China also agreed to work together with the United States to address US concerns relating to online music distribution. The IPR working group identified the current initiatives undertaken by both countries on key issues, including China's further promotion of software legalization of enterprises, information exchanges on measures for promoting software legalization and the provision of opportunities for interested parties to comment on China's new Patent Law and its implementing regulations. Both sides also agreed to hold seminars and/or form a task force under the JCCT IPR Working Group to exchange information on dealing with "bad faith" trademark registration.

### **IX. Product Safety**

Both sides touched upon product safety issues and agreed to hold a government-to-government exchange of information on dietary supplement regulations by March 31, 2010. China confirmed that China's Compulsory Certification (CCC) testing and certification rules issued on April 29, 2009 for 13 categories of information security products only apply to products procured by Chinese government agencies. In addition, China agreed to establish a dialogue with the United States on the global practice of trade in information security products.

### **X. Travel and Tourism**

Both sides agreed to implement Phase II of the MOU on Travel, which would allow 12 more Chinese provinces or cities to organize US-bound leisure travel from China, increasing the total locations to 21. Both sides also agreed to hold a high-level meeting of the JCCT Tourism Working Group in January 2010 to sign a program of work to enhance travel under the MOU. In addition, both sides agreed to launch a new Vice Minister-level dialogue with China's MIIT on industrial policies in 2010, continue dialogue on China's Anti-Monopoly Law and hold the China-US Legal Exchange in 2010, and convene a meeting as early as possible to discuss China's market economy status.

## Outlook

In recent months, bilateral trade irritants have cropped up between China and the United States, including the US ban on poultry imports from China, the US imposition of tariffs on Chinese tires, and China's initiation of trade remedy investigations of US poultry products and autos. The bilateral friction has also spilled over into multilateral for a, with China refusing to discuss the issue of sectoral agreements as part of the non-agricultural market access (NAMA) negotiations in the WTO Doha Development Round. The 20th JCCT, however, offered a good opportunity for both sides to communicate their bilateral trade and investment concerns and establish mechanisms to increase dialogue and strengthen cooperation to address these concerns. In terms of concrete steps forward, the 20th JCCT made important progress on agriculture, energy and government procurement. Nonetheless, several bilateral concerns remain unresolved, such as China's restrictions on online sales of foreign music, China's value-added tax rebates on exports, and market access into China's telecommunications market. US and Chinese officials will likely work on these issues and others "behind-the-scenes" over the next year in order to bring them up at the next JCCT which is scheduled to take place in the United States in 2010.

## House Ways and Means Trade Subcommittee Explores Preference Program Reform

### Summary

On November 17, 2009, the House Ways and Means Trade Subcommittee held a hearing on US preference programs and how to reform the Generalized System of Preferences (GSP) and Andean Trade Preferences Act (ATPA) programs. GSP and ATPA are scheduled to expire on December 31, 2009, unless Congress extends the programs as it has done over the past several years. The Trade Subcommittee invited government officials and members of the private sector to testify at the hearing.

### Analysis

We summarize below several of the comments and testimony delivered at the November 17, 2009 House Ways and Means Trade Subcommittee hearing on preference program reform.

#### I. Remarks and Testimony from Members of Congress

**House Ways and Means Trade Subcommittee Chairman Sander Levin (D-MI)** stated that Congress may not have enough time in 2009 to reform US preference programs before they expire in December and he indicated that he favors a two-year extension of expiring preference programs. Following the

hearing, Chairman Levin stated that Members of Congress ~~will~~ work as much as we can on these preference issues and if we cannot finish the work [this year], we'll extend." He noted that the duration of an extension for expiring programs must still be worked out with the Senate.

**Rep. Jim McDermott (D-WA)**, who is expected to introduce a bill on trade preferences shortly, stated that ~~the~~ stability of [preference] programs is essential to them being effective" and he opined that US preference programs should be afforded long-term extensions as opposed to the short-term extensions that Congress had provided the programs over the past several years. He also noted that US preference programs are ~~too~~ complicated and too hard to use . . . [and] we impose regulations that poor countries cannot meet without our help." He called on Congress and the Administration to simplify the programs.

**Rep. Linda Sanchez (D-CA)** called for reform of investor protection provisions in US preference programs and opined that environmental standards should serve as eligibility criteria for trade preference program participation. In written comments to the Subcommittee, she noted that ~~the~~ failure of some countries to meet certain guidelines for the program" should enable Members of Congress to reexamine how US preference are renewed, using the Philippines (a GSP participant) as an example and stating that the Government of the Philippines reportedly has been involved in extrajudicial killings and intimidation of union leaders, in clear violation of international labor standards. She also provided remarks on efforts made by the Chevron Oil Co. to convince Congress and the Office of the United States Trade Representative (USTR) to deny Ecuador ATPA benefits because of an oil contamination lawsuit filed by Ecuador against Chevron. Rep. Sanchez opined that because Chevron faces a possible USD 27 billion pollution judgment against it in an Ecuadorian court, ~~instead~~ of settling with the plaintiffs, embarking on clean-up efforts, or even seeking mediation, Chevron has engaged in a lobbying effort that looks like little more than extortion."

**Chairman of the House Foreign Affairs Subcommittee on the Western Hemisphere Eliot Engel (D-NY)** opined that ATPA preferences should be extended for at least two years and he urged the Administration to add Paraguay as an ATPA beneficiary (ATPA currently covers only Colombia, Bolivia, Ecuador, and Peru, although Bolivia has been suspended from the program).

**Rep. Bob Etheridge (D-NC)** remarked that expanded trade preferences could have an impact on North Carolina's textile firms. He noted that Bangladesh, for example, has become a major exporter of textiles and that Bangladesh's share of the United States' textile and apparel imports in 2008 was three times as large as the share from all of sub-Saharan Africa. **Rep. Joseph Crowley (D-NY)**, meanwhile, remarked that there should be lower tariffs for Bangladesh, opining that Bangladesh ~~has~~ the capacity to take advantage of the preferences, if only it had the chance."

### II. Remarks and Testimony from US Government Officials

**USTR General Counsel Tim Reif** testified to Trade Subcommittee Members that preference programs have helped developing countries and have created opportunities for US workers, farmers and businesses. In written comments to the Subcommittee, Reif stated in 2008, the total value of US imports under US preference programs was USD 110 billion, an increase of 21 percent from 2007. According to Reif, imports under US preference programs resulted in lower costs for US consumers and provided savings totaling USD 850 million in 2008. Reif acknowledged that “there are a number of important questions that deserve careful deliberation and analysis in considering possible modifications to GSP and the other programs” including issues related to country graduation, harmonization of US preference programs and rules of origin, and possible modifications to eligibility criteria. He stated, however, that “in view of the very short time remaining before the program expires on December 31, 2009, we would propose to continue to work with all interested Members, and private sector stakeholders, to address these and any other concerns,” adding that the Administration urges “speedy renewal and stands ready to work with Congress to achieve this as quickly as possible.” When asked by Subcommittee Members if the United States should add environmental protection criteria to the current list of eligibility criteria for preference programs, Reif declined to respond directly.

**Director for International Affairs and Trade Loren Yager at the Government Accountability Office (GAO)** stated that total US preference imports grew from USD 20 billion in 1992 to USD 110 billion in 2008; the increases from preference program countries primarily reflect the addition of new eligible products, increased petroleum imports from some African countries, and the rapid growth of exports from countries such as India, Thailand, and Brazil. Yager stated that the GAO has solicited options from experts for improving the competitiveness of the textile and apparel sector in the African Growth and Opportunity Act (AGOA) countries, and he noted that the options they suggested included aligning trade capacity building with trade preference programs, modifying rules of origin to facilitate joint production among trade preference program beneficiaries and free trade partners, and creating non-punitive and voluntary incentives to encourage the use of inputs from the United States or its trade preference partners to stimulate investment in beneficiary countries. GAO has also recommended that USTR review beneficiary countries that have not been considered under the regional programs, and periodically consider preference programs jointly.

**Deputy Assistant Administrator for the US Agency for International Development (USAID) Mary Ott** opined that developing countries are not taking full advantage of preference benefits under the programs,

adding that USAID likes to see not just the three largest companies in the capital city take advantage [but also] farmers and small businesses.”

**Deputy Undersecretary for International Affairs at the US Department of Labor Sandra Polaski** urged Members of Congress to analyze the differences among the preference programs in order to highlight those program provisions that work well and apply those measures to all preference programs on a broader scale.

### III. Remarks and Testimony from the Private Sector

**President of the National Foreign Trade Council (NFTC) William Reinsch** recommended that Congress take several of the NFTC’s recommendations in reforming US preference programs in order to make them more effective, including providing permanent, 100 percent duty free and quota-free benefits for eligible lesser developed countries (LDCs), ending the short and uncertain renewals,” integrating the multiplicity of rules of origin, eligibility requirements and product graduation requirements among the different programs, simplifying and coordinating government administration of the program, and tying renewal, eligibility, and graduation more completely to capacity building.”

**Trade Advisor at The Global Business Dialogue Meredith Broadbent** cautioned that proposals to streamline and consolidate US preference programs should be considered but not at the expense of reducing the status of regional groupings that the countries themselves view as important and which provide a framework and incentives for USTR to promote regional economic integration, often an important trade and development objective in and of itself.”

**The Emergency Committee for American Trade (ECAT)** continued its strong support for the continuation of ATPA benefits for Colombia and Peru, adding that preferences should not be automatically extended to countries such as Ecuador and Bolivia that have turned their back on the basic rule of law.” According to ECAT, Ecuador suffers from denial of justice and the lack of an independent judiciary” and consequently, Congress should look closely at denying ATPA benefits entirely to Ecuador, suspending those benefits or, ensuring that the Administration can prevent Ecuador’s government from benefiting from any ATPA renewal.” ECAT also noted that Bolivia has not improved its efforts to combat narco-trafficking which led to the removal of Bolivia’s ATPA benefits in 2008, and consequently, the Administration should not reinstate ATPA benefits for Bolivia.

**W. David Hastings, testifying on behalf of the National Council of Textile Organizations**, opined that the Trade Subcommittee should reject a proposal to grant Cambodia and Bangladesh duty-free status for apparel exports as part of broad trade preference reform. According to Hastings, over 40 trade

associations are urging Congress to reject such a proposal because of what they believe to be “large-scale” growth in apparel exports from these two countries in the last five years.

### **Outlook**

Following the Trade Subcommittee hearing, Chairman of the House Ways and Means Committee Charles Rangel (D-NY) lauded Subcommittee Members for looking into preference program reform. Chairman Rangel stated that he expects the House of Representatives to provide a short-term extension for the GSP and ATPA programs by the end of 2009, and he stated that “a broader debate on the structure of the US trade preference program will occur next year.” Chairman Rangel’s prediction reflects Senate Finance Committee Ranking Member Charles Grassley’s (R-IA) preference for a short-term extension that would then enable Congress to consider major reforms to the programs in 2010. Meanwhile, Senate Finance Committee Chairman Max Baucus (D-MT) favors a longer term extension over a shorter one to provide more certainty for businesses, although he expects the Senate to pass short-term extensions for GSP and ATPA by the end of 2009, leaving the issue of reforming both programs for 2010.

The statements from Members of Congress on short-term extensions for the expiring preference programs echo the extension process from the past several years. Over the last several sessions of Congress, Members of Congress, such as Rep. Levin and Sen. Grassley, have insisted on major reform to the provisions of preference programs. Usually, such statements are issued at the beginning of the Congressional session, but as the Congressional agenda grows during the year and as legislators find themselves focusing on other priorities, these statements shift to calls for short-term extensions and promises to consider reform for the programs in the following year. It appears that 2009 will follow the same pattern and that Members of Congress will grant the expiring GSP and ATPA programs another short-term extension, shifting their focus to program reform in 2010 and beyond. This time around, however, Sen. Grassley appears to be pushing harder for a shorter extension in order to ensure the reform debate in 2010. US and foreign businesses, meanwhile, have criticized the short-term extensions over the past several years, noting that the short extension periods do not provide their businesses with proper assurances and the certainty necessary to use the programs effectively. It appears that they will again have to rely on short-term extension in 2009 and look to 2010 for reforms to the programs that could include longer-term extensions, such as the two-year extension Rep. Levin supports.

## ***United States Highlights***

### **Legislators Call for DOC Action on China's Alleged Currency Manipulation**

In a November 19, 2009 letter to Secretary of Commerce Gary Locke, Sens. Charles Schumer (D-NY) and Lindsey Graham (R-SC) urged the Department of Commerce (DOC) to “correct the economic imbalance between the United States and China.” In their letter, the Senators their serious concern that the Commerce Department is not doing everything that it can to help enforce US trade laws.” The Senators note that US manufacturers have alleged repeatedly that China's manipulation of its currency is a countervailable subsidy but that DOC has refused to launch an investigation into these allegations. The Senators opine that “Commerce has authority under existing law to initiate investigations that can help US industries and protect US jobs,” and they urged DOC “to use that authority.”

The Senators believe that China is manipulating its currency “to keep its value lower than it would otherwise be, thereby giving its exports a significant trade advantage,” and they noted that “no further proof is needed than just seeing what has happened since March of this year, when the dollar reached its peak value for 2010 . . . [since] March, the broad dollar index is down more than 11 percent [yet] against the Chinese yuan, the dollar has dropped only about one-tenth of one percent—basically no movement at all.” The Senators note that China's government has once again fixed the yuan against the dollar.

The Senators acknowledge that although China's alleged currency manipulation is a sensitive issue, “a desire to avoid international political controversy is not an excuse to avoid enforcement of US law.” In closing, the Senators stated that “the allegation that China provides a subsidy to its exporters by manipulating its currency should be assessed no differently than any other subsidy allegation [and DOC] has a statutory obligation to consider the evidence provided by US manufacturers and to make a substantive decision on whether to launch an investigation.”

China's alleged currency manipulation has cropped up in recent months. In addition to the November 19, 2009 letter, a Congressional advisory panel recommended on the same day that Congress take action to offset the impact China's currency manipulation has on the domestic economy. Also, on November 5, 2009, 45 Members of Congress signed a letter to President Obama asking the Obama Administration to support the Currency Reform for Fair Trade Act of 2009 (CRFTA, H.R. 2378 sponsored by Reps. Tim Ryan (D-OH) and Tim Murphy (R-PA), and S. 1027 sponsored by Sens. Jim Bunning (R-KY) and Debbie Stabenow (D-MI)). President Obama supported the legislation as a Senator in the 110th Congress and

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during his Presidential campaign. In their letter, the legislators opined that “a firm approach is needed to address China’s unfair comparative advantage on the United States because of its undervalued currency.” The lawmakers opined that support for the CRFTA would “establish a firm approach to correcting this unfair trade practice, and defend American workers, industry and business that have been harmed by the unfair disadvantages in manufacturing and export that currency misalignment has created.” The CRFTA would amend the Tariff Act of 1930 to require the administering authority to: (i) determine, based on certain requirements, whether the exchange rate of the currency of an exporting country is fundamentally and actionably undervalued or overvalued (misaligned) against the US dollar for an 18-month period; and (ii) take certain actions under a countervailing duty or antidumping duty proceeding to offset such misalignment in cases of an affirmative determination. The bill also proposes to subject the misalignment to the US dollar of the currency of non-market economy countries also to the countervailing and antidumping duty provisions of the Tariff Act of 1930. The bill also ensures that World Trade Organization (WTO)-consistent trade remedies are available to US industries and workers, requires the Department of Commerce to measure currency misalignment in a transparent fashion, and provides an incentive for foreign governments to stop misaligning their currencies. Both the House and Senate version of the bill were last sent to corresponding Committees in the House and Senate for review in May 2009.

The Administration has not directly responded to legislators’ recent calls for action on China’s alleged currency manipulation and it is unlikely that the Administration will take any concrete actions to address legislators’ concerns, given the Treasury Department’s most recent decision not to cite China as a currency manipulator and given the recent successes achieved through the bilateral US-China Joint Commission on Commerce and Trade (JCCT) meetings. The United States already has enough bilateral irritants and any concrete action on China’s currency would only increase trade friction between the two countries.

### **Rep. McDermott Introduces New Partnership for Trade Development Act of 2009, Expanding Expiring Preference Programs**

On November 18, 2009, House Ways and Means Trade Subcommittee Member Jim McDermott (D-WA) introduced the New Partnership for Trade Development Act of 2009 (H.R. 4101), a bill that would expand and reform the Generalized System of Preferences (GSP) program by increasing the number of products eligible for duty-free treatment, including textiles and apparel produced in Cambodia and Bangladesh. Currently, textiles, apparel, and footwear are excluded from GSP duty-free benefits. Specifically, H.R.

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H.R. 4101 would eliminate statutory exclusions for certain goods under current GSP law and create a Trade Development Review Panel to review these goods for preferential treatment within three years. In addition, H.R. 4101 would extend the GSP program until 2019 and would establish a new single rule of origin (ROO) for use by GSP. According to Congressional sources, H.R. 4101 modifies the existing rule of origin under the GSP program to create a new rule of origin that is easier to meet. Under GSP, an export is considered to be originating in a beneficiary country if the export contains value added in the beneficiary country of at least 35 percent of the price of the product when sold for export. The "value added" in the beneficiary country is limited to the value of the inputs if they are produced in the beneficiary country, and the value of the labor used in the beneficiary country. H.R. 4101 would allow the value of the imported materials themselves to be counted toward the 35 percent threshold. Imported materials could come from any GSP beneficiary country. The bill would also require the President to consider efforts of advanced developing countries to offer preferential benefits to poorer countries when determining GSP eligibility.

The bill also contains provisions for US preferences extended to African countries. H.R. 4101 would extend preferences under the African Growth and Opportunity Act (AGOA) to non-AGOA less developed countries (LDCs). Significant apparel suppliers from the group of non-AGOA LDCs would have a quota on those categories of apparel where their production overlaps with AGOA countries; the quota would last for 10 years and start at 50 percent of 2007 import levels but can be increased by 10 percent annually if 50 percent of that country's use of apparel inputs come from GSP and LDC countries. H.R. 4101 would also extend the AGOA third-country fabric rule from September 30, 2012 (its current expiration date), to September 30, 2015. The bill would create an Office of Trade and Competitiveness for Least Developed and African Countries in the Executive Office of the President that would plan, develop, and coordinate trade capacity building and competitiveness programs for least developed and African countries.

H.R. 4101 was last referred to the House Ways and Means Committee on November 18, 2009. Congressional sources are unclear if the bill will see forward movement by the end of the year, which is when the GSP and the Andean Trade Preferences Act (ATPA) are scheduled to expire. For the past several weeks, various reports from Capitol Hill have indicated that legislators may be looking to a quick extension of the expiring preference programs in order to consider major overhauls in 2010. H.R. 4101 certainly proposes major changes to some of the US programs and it is uncertain if legislators will be willing to vote on these changes before the end of the year or will instead look to a straightforward and short extension of the programs.

## **Senator Lifts Hold on Deputy USTR Nominee**

On November 10, 2009, Sen. Maria Cantwell (D-WA) has lifted her hold on the nomination of Miriam Sapiro to be Deputy United States Trade Representative (DUSTR) after securing a commitment from USTR Ron Kirk that he would help move forward her sponsored legislation establishing duty-free export zones in Afghanistan and Pakistan. Sen. Cantwell had initially placed the hold on Sapiro over the Administration's perceived failure to help move her bill to create duty-free trade preferences for imports from Pakistan and Afghanistan."

Sapiro, however, still faces another hold on her nomination from Senate Finance Committee member Jim Bunning (R-KY). According to Congressional sources, Sen. Bunning has blocked Sapiro's confirmation in order to pressure the Obama Administration into taking action against a Canadian legislative proposal that would effectively ban imports of American cigarettes blended with burley tobacco." Sen. Bunning argues that the proposed Canadian legislation which was originally intended to address the growing concerns over candy-flavored tobacco products being targeted to minors, had morphed into overbroad legislation that would effectively ban the export of American grown burley tobacco to Canada" and would unfairly discriminate against US tobacco growers and had the potential to destroy family-owned small businesses and jobs in Kentucky."

It is unclear at this stage when Sen. Bunning will remove his hold on Sapiro and when the Senate can confirm Sapiro, who was nominated as DUSTR on April 14, 2009. On July 23, 2009, the Senate Finance Committee favorably reported her nomination by voice vote. Once confirmed by the Senate, Sapiro will join DUSTR Demetrios Marantis at the Office of the USTR.

## **Senate Environment and Public Works Committee Approves Senate Climate Change Bill Over Republican Opposition**

On November 5, 2009, Democrats on the Senate Environment and Public Works Committee approved the "Clean Energy Jobs and America Power Act" (S. 1733) by a vote of 11 to 1. The Committee's decision to hold a vote on the bill has generated anger from Republican Committee Members. The seven Republican Members boycotted the Committee's consideration of the bill and were absent from the vote. Specifically, Committee Republicans had vowed to boycott the markup until the Environmental Protection Agency (EPA) completed a more detailed cost analysis of the bill. Committee Chairman Barbara Boxer (D-CA), however, stated that the Committee did not have any choice but to report the bill on an up-or

down vote without debating amendments in order to bypass the Republican boycott of the Committee markup.

On September 30, 2009, Senate Environment and Public Works Committee Chairwoman Boxer and Senate Judiciary Chairman John Kerry (D-MA) unveiled S. 1733, a bill that seeks to reduce greenhouse gas emissions and promote US energy independence. The bill includes provisions on greenhouse gas emission reductions across multiple economic sectors, in addition to a “transition and adaptation” section that is meant to address the costs of a climate bill for US consumers and businesses. The EPA would serve as the main administrator for the provisions and programs included in the bill. Some of the main provisions of the —Clean Energy Jobs and America Power Act” include, but are not limited to:

- **Emissions Reductions.** The bill proposes cuts in emissions from 2005 levels, with a three percent cut by 2012, a 20 percent cut by 2020, a 42 percent cut by 2030, and an 83 percent cut by 2050.
- **Pollution Reduction and Investment System.** The bill proposes the creation of a Pollution Reduction and Investment (PRI) mechanism that “sets pollution reduction targets, then uses market incentives to find the most affordable paths to achieve them.” Under the PRI system – which initially “applies only to the largest polluters in the country” – major polluters will be required to turn in one “carbon credit” or voucher for the right to pollute one ton of carbon. Vouchers are tradable and can be bought or sold. The PRI system also limits the total number of vouchers available in a given year, thereby “allowing America to meet hard targets for carbon reduction.” The total number of vouchers available shrinks every year.
- **Emissions Allowances.** The bill would establish an annual tonnage limit on greenhouse gas emissions from specified activities, and would direct the EPA to establish allowances equal to the tonnage limit for each year (with one allowance representing the permission to emit one ton of greenhouse gases, measured in tons of carbon dioxide equivalent). Covered entities are prohibited from emitting greenhouse gases in excess of their allowable emissions level, which is determined by the number of emission allowances and offset credits they hold on the specified date. In addition, the bill would establish criteria that must be met before allowances from foreign programs can be used for compliance by covered entities. The bill also establishes a “market stability reserve” of emission allowances that will be auctioned at a minimum set price that increases annually. According to the legislators, “the auction of additional allowances will help contain the costs of meeting the annual greenhouse gas limits and minimize price fluctuations.”

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- **Support for Affected Industries.** The bill establishes a program that rebates emission allowances to eligible industrial sectors to compensate these sectors for costs incurred as a result of compliance with the “Clean Energy Jobs and America Power Act.” The bill directs the EPA to determine which sectors and subsectors should be eligible for rebates through a rulemaking based on an assessment of the energy and greenhouse gas intensity of each sector and the trade intensity of each sector.
- **Border Measures.** Regarding border measures, the bill states that “it is the sense of the Senate that this Act will contain a trade title that will include a border measure that is consistent with [US] international obligations and designed to work in conjunction with provisions that allocate allowances to energy-intensive and trade-exposed industries.”

The bill is currently traveling among the Senate Committees that have jurisdiction over the different provisions included within the draft. The Senate Finance Committee, for example, held a hearing on November 10, 2009 on the draft legislation in which it heard testimony on the proposed bill from witnesses including representatives from the Nuclear Energy Institute, the American Enterprise Institute for Public Policy Research and the Pacific Gas and Electric Company. Other committees are likely to hold similar hearings on the various provisions of the Senate climate change bill.

According to Congressional reports, it is uncertain if Sens. Boxer and Kerry have the 60 votes needed to beat a filibuster but the Senate Environment and Public Works Committee’s approval of the bill has led some observers to predict that Sens. Boxer and Kerry are working hard behind the scenes to acquire strong support for the bill. They will have to contend with several legislators that have already indicated their opposition to the bill, including Sen. John Rockefeller (D-WV) who opined that the draft legislation is “a disappointing step in the wrong direction,” adding that the bill’s provision that US greenhouse gas emissions be reduced by 20 percent by 2020 is “unrealistic and harmful [and does not provide us with] enough time to deploy the carbon capture and storage and energy efficiency technologies we need.” Sen. Kent Conrad (D-ND) expressed similar concerns with the 20 percent reduction target. Consequently, the various issues surrounding the Senate bill could prevent short-term consideration of the legislation, making it less likely that President Obama will have the climate change legislation he wants to sign before the start of the United Nations Climate Change Conference in Copenhagen in December 2009.

### **Legislators Urge Administration Support for Currency Reform for Fair Trade Act**

In a November 5, 2009 letter to President Obama, 45 Members of Congress asked the Obama Administration to support the Currency Reform for Fair Trade Act of 2009 (CRFTA, H.R. 2378 sponsored

by Reps. Tim Ryan (D-OH) and Tim Murphy (R-PA), and S. 1027 sponsored by Sens. Jim Bunning (R-KY) and Debbie Stabenow (D-MI)). President Obama supported the legislation as a Senator in the 110th Congress and during his Presidential campaign. In their letter, the legislators opined that “a firm approach is needed to address China’s unfair comparative advantage on the United States because of its undervalued currency.”

The legislators signing the letter noted that they were “both surprised and disappointed that the Treasury Department declined to name China as a currency manipulator in the October 15th report to Congress mandated by the 1988 Omnibus Trade and Competitiveness Act.” According to these lawmakers, the Treasury Department’s refusal to cite China as a currency manipulator “shows that the standards for [currency] manipulation need to change.” The lawmakers opined that support for the CRFTA would “establish a firm approach to correcting this unfair trade practice, and defend American workers, industry and business that have been harmed by the unfair disadvantages in manufacturing and export that currency misalignment has created.”

The CRFTA would amend the Tariff Act of 1930 to require the administering authority to: (i) determine, based on certain requirements, whether the exchange rate of the currency of an exporting country is fundamentally and actionably undervalued or overvalued (misaligned) against the US dollar for an 18-month period; and (ii) take certain actions under a countervailing duty or antidumping duty proceeding to offset such misalignment in cases of an affirmative determination. The bill also proposes to subject the misalignment to the US dollar of the currency of non-market economy countries also to the countervailing and antidumping duty provisions of the Tariff Act of 1930. The bill also ensures that World Trade Organization (WTO)-consistent trade remedies are available to US industries and workers, requires the Department of Commerce to measure currency misalignment in a transparent fashion, and provides an incentive for foreign governments to stop misaligning their currencies. Both the House and Senate version of the bill were last sent to corresponding Committees in the House and Senate for review in May 2009.

The Administration has not responded to the legislators’ call for support of the CRFTA, and it is unlikely that President Obama will offer outright support for the bill, given the Treasury Department’s most recent decision not to cite China as a currency manipulator. The United States already has enough bilateral irritants with China stemming from US bans on poultry imports from China, President Obama’s decision to impose tariffs on Chinese tire imports and China’s decision to initiate trade remedy investigations on US poultry and autos. Support for legislation that would ultimately define China as a currency manipulator would only add to the trade tension between the two countries.

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In addition, it is unlikely that the CRFTA will see any concrete forward movement in either Chamber of Congress by the end of 2009. Since May 2009, there has been no movement on both versions of the bill, and with end-2009 approaching quickly and legislators focused on other domestic issues, it is unlikely that the CRFTA will be a major piece of legislation that lawmakers will shift their attention to after debating healthcare and other issues. Nonetheless, given the 45-person support for the bill (as indicated in the letter to President Obama), it is likely that legislators will continue their push to have the Administration support the bill and its provisions.

### **Senate Finance Committee Holds Confirmation Hearing for DUSTR Nominee**

On November 4, 2009, the Senate Finance Committee held a confirmation hearing on the nomination of Michael Punke to be Deputy United States Trade Representative (DUSTR). President Obama nominated Punke as DUSTR and the US Permanent Representative to the World Trade Organization (WTO) in Geneva on September 3, 2009. Punke is an author and a lawyer. He formerly worked at the Washington, DC offices of Mayer, Brown, Rowe & Maw. From 1995 to 1996, he was senior policy adviser at USTR. From 1993 to 1995, he served as Director for International Affairs in the Clinton Administration, and prior to that, he served as International Trade Counsel on the staff of Sen. Max Baucus (D-MT).

At the November 4 Senate Finance hearing, Punke testified to Committee Members that the United States still needs more time to review its position in the WTO Doha Round and whether it has been successful in winning the type of market-opening concessions from other countries that could lead to an agreement in the Doha Round of World Trade Organization negotiations." According to Punke, the United States has been undergoing bilateral consultations with trading partners over the past several months in parallel" with the ongoing multilateral negotiations in Geneva in an effort to obtain greater clarity" on what other WTO Members are willing to offer in the stalled multilateral negotiations. Punke also stated that concessions that the United States has made in the Doha Round are very clear" whereas it is unclear what [the United States is] going to receive in return." Responding to a statement from Committee Chairman Baucus that the Doha negotiations must provide real, meaningful market access for American producers," Punke stated that in his position as DUSTR, he will attempt to gain those concessions from our trading partners—to gain that clarity—so that we can bring a good deal back to Congress and so that you can see very clearly what concessions we have won on behalf of the

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American people,” and he reflected the view of several Members of the Committee that ~~no~~ deal is better than a bad deal.”

Punke’s DUSTR nomination is not the only nomination that is awaiting Senate confirmation. According to several reports, Sen. Maria Cantwell (D-WA) has placed a hold on President Obama's other nominee for DUSTR, Miriam Sapiro. Congressional sources note that Sen. Cantwell placed the hold on Sapiro over “the Administration's perceived failure to help move her bill to create duty-free trade preferences for imports from Pakistan and Afghanistan.” Sapiro also faces another hold on her nomination from Senate Finance Committee member Jim Bunning (R-KY). According to Congressional sources, Sen. Bunning has blocked Sapiro's confirmation in order to pressure the Obama Administration into taking action against a Canadian legislative proposal that would “effectively ban imports of American cigarettes blended with burley tobacco.” It is unclear when the Senators will remove their holds on Sapiro's nomination and allow a Senate vote on her nomination. A timetable for Punke’s confirmation by the Senate to be DUSTR is also unclear at this time, although some Congressional observers opine that the Senate Finance Committee’s confirmation hearing on Punke’s nomination is a ~~positive~~ “step” forward in filling out top trade positions in the Obama Administration that have remained empty since the beginning of 2009.

## Free Trade Agreements

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### *Free Trade Agreements Highlights*

#### **US and India Meet to Discuss Bilateral Issues, Launch New Trade and Investment Initiatives**

On November 24, 2009, President Obama met with Indian Prime Minister Singh in Washington, DC to discuss bilateral issues between the United States and India. At the meeting, both leaders agreed to a new strategic relationship between the two countries that would help to expand economic and trade cooperation. Both sides announced a number of initiatives in trade, investment and technology cooperation, and President Obama also reaffirmed his intention to fully implement the bilateral civil nuclear agreement that the two sides completed in 2008.

According to a press release from the White House, the high-level meeting included the following initiatives on trade and investment:

- **Creation of a Framework for Cooperation in Trade and Investment.** The framework is meant to foster “an environment conducive to technological innovation and collaboration, promote inclusive growth and job creation and support opportunities for increased trade and investment – including for small and medium-size enterprises”
- **Agriculture Dialogue and a Memorandum of Understanding on Agricultural Cooperation and Food Security.** At the meeting, the two sides launched a new bilateral agriculture dialogue that signed a Memorandum of Understanding (MoU) on Agricultural Cooperation and Food Security meant to foster cooperation between the governments in crop forecasting, management and market information; regional and global food security through the L'Aquila Food Security Initiative; science, technology and education; nutrition and expanding private sector investment in agriculture.
- **Intellectual Property Rights (IPR).** The two sides signed an MoU between the US Patent and Trademark Office and Indian Ministry of Commerce and Industry that will focus on human resource development, capacity building and public awareness programs in IP protection and enforcement.
- **Economic and Financial Partnership.** The two sides announced the creation of a new US-India Economic and Financial Partnership that will focus on macroeconomic policy, the financial sector and infrastructure development. The Partnership will meet at the cabinet level annually and working group subcabinet meetings will be held throughout the year.

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- **Bilateral Investment Treaty (BIT).** White House officials noted that the two leaders discussed the negotiation of a US-India BIT and stated that both sides ~~are~~ committed to the active consideration of negotiations on a BIT.”
- **Immigration.** At the meeting, both sides also agreed to facilitate greater movement of professionals, investors and business travellers in order to enhance economic and technological partnership.

It appears that at the meeting between US and Indian leaders, President Obama and PM Singh did not discuss in-depth major contentious issues between the two countries, including the stand-off between the United States and India in the World Trade Organization (WTO) Doha Round over the special safeguard mechanism (SSM) in the Agriculture negotiations, which has led to standstill to the multilateral negotiations. Certainly, Administration officials highlighted the positive bilateral efforts and agreements that came out of the meeting, and although both sides appear keen to strengthen economic ties (a theme that President Obama has been heralding in recent weeks), it appears that the meeting did not produce any concrete outcomes apart from the creation of several working groups that will address bilateral issues and the signing of several MoUs. It will be interesting to see if the Obama Administration will move forward on a BIT with India, especially in light of India’s (and other US trading partners’) decision to move forward on bilateral trade agreements with other countries because of US ~~sluggishness~~” in moving forward on trade. Indeed, on November 17, 2009 Canada and India signed an MOU to constitute a Joint Study Group (JSG) that will explore the possibility of a Comprehensive Economic Partnership Agreement (CEPA) between the two countries. The JSG is expected to finalize its report in six months and propose a possible framework for the CEPA. Some observers opine that a possible India-Canada CEPA may spur the Administration to secure stronger economic ties with India.

### **President Obama Announces US “Engagement” in TPP FTA Process**

On November 14, 2009, in remarks delivered at Suntory Hall in Tokyo, Japan, President Obama announced that the United States will begin discussions with trading partners as part of the Trans-Pacific Partnership (TPP) Free Trade Agreement (FTA) initiative. President Obama delivered his speech in Tokyo during his trip to Asia, and he stated that ~~the~~ United States will also be engaging with the Trans Pacific Partnership countries with the goal of shaping a regional agreement that will have broad-based membership and the high standards worthy of a 21st century trade agreement.” The Administration issued a fact sheet after President Obama’s speech that stated that the United States will engage with Singapore, Chile, New Zealand, Brunei, Australia, Peru, and Vietnam ~~to~~ craft a platform for a high-standard, comprehensive agreement.”

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United States Trade Representative (USTR) Ron Kirk echoed President Obama's announcement that the United States will engage with TPP FTA partners and added that the United States will seek with current and future Trans-Pacific Partnership participants to shape a platform with the scope, coverage, and standards to successfully integrate the Asia-Pacific economies." USTR Kirk also stated that the Obama Administration's work with TPP countries will be done in close consultation with the United States Congress and with stakeholders at home."

Brunei, Chile, New Zealand and Singapore concluded the TPP FTA in 2005, and the agreement went into effect in 2006. In March 2008, TPP countries began work on the outstanding Financial Services and Investment chapters; the United States joined the TPP countries in these talks. On September 22, 2008, former USTR Susan Schwab announced the launch of negotiations for the United States to join the TPP. Vietnam is an observer to the TPP, and Australia and Peru announced their interest in participating in the negotiations. Of the seven countries participating in the TPP FTA negotiations, the United States has implemented FTAs with four of them: Chile, Singapore, Australia, and Peru.

President Obama's announcement that the United States was ready to engage with TPP FTA partners came as a surprise for many observers. US officials were scheduled to meet with TPP FTA partners the week of March 30, 2009 for the first round of US-TPP FTA negotiations but USTR requested a postponement of this first round in order to review the agreement and US participation in the negotiations. Since that time, Administration officials have not provided any insight on whether the Administration was willing to resume the TPP negotiations, and some observers noted that some Administration officials as recently as last month signaled they did not consider [the TPP FTA] an ambitious enough initiative."

Congressional reaction to President Obama's TPP announcement was positive. Senate Finance Committee Chairman Max Baucus (D-MT) stated that "President Obama's decision to participate in the TPP negotiations is right for American jobs, right for American exporters and right for the American economy," adding that "by opening these key markets for American exporters, the United States shows it has a new blueprint on trade . . ." Senate Finance Committee Ranking Member Charles Grassley (R-IA) stated that he supports the Administration's action and he urged the President to also start the implementation process for the pending US FTAs with Colombia, Panama and Korea right away." House Ways and Means Committee Chairman Charles Rangel (D-NY) and Trade Subcommittee Chairman Sander Levin (D-MI) echoed the Senators' statements and noted that "the TPP offers both opportunities and challenges [and if] done effectively, it can be of mutual economic benefit, including by breaking down barriers and gaining real access for US farmers, workers and businesses, and incorporating international labor and environmental standards." The two House Members also noted that

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the US participation in the TPP FTA negotiations presents the challenge within a new trade policy of grappling with the inclusion of a country, Vietnam, transitioning from a non-market economy with government control of key sectors, restrictions in the Vietnamese labor market, and absence of worker rights” and they urged the Administration to continue active consultations with Congress. House Ways and Means Committee Ranking Member Dave Camp (R-MI) and Trade Subcommittee Ranking Member Kevin Brady (R-TX) welcomed the President’s commitment to engage in bipartisan consultations on the TPP negotiations and urged the President to help speed Congressional consideration of the pending free trade agreements with South Korea, Colombia, and Panama.”

The US business community also reacted positively to the TPP announcement. The US Chamber of Commerce applauded both President Obama and Ambassador Kirk for speaking positively about . . . the Trans-Pacific Partnership,” adding that words must now be matched by actions [because] the rest of the world is not standing around waiting for the United States.” The Emergency Committee for American Trade (ECAT) welcomed the announcement, stating that negotiating and entering into a commercially meaningful TPP will not only open new markets, it will set strong standards, harmonize key rules and enhance US engagement with the economically and strategically important Asia-Pacific corridor.” The National Foreign Trade Council noted that the United States involvement in the TPP FTA may prompt other trading partners to join the talks because of the commercial significance of the US market for their products.

It is unclear at this stage when and how USTR will formally begin engaging with TPP FTA partners on the agreement, although US officials have likely already met with their foreign counterparts on the sidelines of the Asia-Pacific Economic Cooperation (APEC) meetings held in Singapore to discuss President Obama’s announcement. The announcement has certainly provided some small relief to a trade community that has become increasingly nervous that the Obama Administration has placed trade on the backburner.” Members of the US trade community have been urging the Administration to move forward on pending US trade issues since President Obama assumed office in January 2009, including resumption of the TPP FTA, action on the pending FTAs with Colombia, Panama and Korea, and proactive participation in the stalled Doha Round of multilateral negotiations. The Administration’s announcement on the TPP FTA did catch some members of the trade community off-guard, but based on the positive reception, the announcement has provided trade observers with some hope that the Administration is ready to move forward on US trade policy and initiatives.

Nonetheless, it should be noted that the Administration has not yet detailed how it will approach the TPP FTA process and when it will formally resume negotiations. Some observers are being more cautious in

their outlook on the US TPP FTA engagement, noting that President Obama referred to US “re-engagement” in the TPP FTA process in his announcement as opposed to stating outright that the United States was rejoining negotiations on the TPP FTA. Indeed, when asked at a press conference in Tokyo what the President meant by “engaging the Trans-Pacific Partnership,” a White House spokesman stated that President Obama meant that “there is an ongoing initiative called the Trans-Pacific Partnership and that our intent is to engage with them to see whether we can shape that initiative into one that is comprehensive and a very high standard and could serve as a platform for further trade liberalization and regional integration in the region,” adding that the Administration will “begin those discussions with the current and potential future members of the Trans-Pacific Partnership, and see whether this is something that could prove to be an important platform going forward.” Observers note that the Administration spokesman did not definitively state that the United States was formally rejoining the TPP FTA negotiations. These same observers note that the Obama Administration has made several statements over the past year that it is committed to re-engaging in the Doha Round, adding that the Administration still has not provided a signal to its trading partners on if, when and how it intends to proactively rejoin the talks. Consequently, the “yet-to-be-defined” details of the TPP announcement should provide better insight as to how USTR will work with trading partners on the agreement if and when Administration officials decide to share them with the public.

### **USTR Releases Little Information on Latest ACTA Negotiating Round**

On November 9, 2009, the Office of the United States Trade Representative (USTR) released a statement by the countries negotiating the Anti-Counterfeiting Trade Agreement (ACTA) regarding the sixth round of ACTA negotiations held in Seoul, Korea November 4 - 6, 2009. Participants in the negotiations included Australia, Canada, the European Union, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland, and the United States. Although USTR did not release any details on the discussions held in the negotiating round, it did note that ACTA “participants underlined the importance of ACTA as an agreement which shall provide for an enhanced framework to fight global infringement of intellectual property rights, particularly in the context of counterfeiting and piracy.” According to USTR, the latest round of ACTA negotiations focused on enforcement of rights in the digital environment, criminal enforcement, and transparency including the availability of opportunities for stakeholders and the public to provide input into the negotiating process. At the negotiating round, US officials also brought up a proposal on how to deal with Internet piracy, and ACTA participants devoted a large part of their discussion on the US proposal. Mexico will host the next negotiating round in January

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2010, and the ACTA participants reaffirmed their commitment to conclude the ACTA agreement as soon as possible in 2010.

The last round of ACTA negotiations was held July 16-17, 2009 in Rabat, Morocco. Participants in that round of negotiations included Australia, Canada, the European Union, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland, and the United States. 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.”

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. —~~by~~ 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 shows 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 will not see any movement until 2010 (or possibly later), and USTR has not announced the Obama

Administration's "new trade policy" much less any possible new FTA negotiations, including whether the United States will continue to participate in the Trans-Pacific Partnership (TPP) FTA negotiations. USTR's involvement in the ACTA negotiations appears to be the only active participation in FTA negotiations for now, although the United States and other ACTA negotiating partners have still not released a full working draft of the provisions of the ACTA, thus making it difficult for those following the ACTA to determine whether the United States and others have really made any forward movement in the talks and what the agreed-upon and contentious issues are in the talks. For the time being, observers are relying on informal and behind-the-scenes reports of the negotiations which do little to reinforce the Administration's insistence that US trade policy is not a "backburner" issue.

### **Administration Still Undergoing Review of KORUS FTA but Offers Little Insight on Possible Movement**

On November 5, 2009, United States Trade Representative (USTR) Ron Kirk delivered remarks to the US-Korea Business Council and touched briefly upon the pending US-Korea (KORUS) Free Trade Agreement (FTA). In his remarks, USTR Kirk stated that the Obama Administration has turned its focus to the Asia-Pacific region because it "has become a worldwide center of economic activity and innovation," noting that 60 percent of US goods exports are now destined for Asia-Pacific countries. He added that the United States' relationship with Korea is a critical part of US engagement in the Asia-Pacific and cited figures from the US International Trade Commission (ITC) that indicate that if the KORUS FTA were put into effect, annual US exports to Korea could rise by USD 10-11 billion annually. He also noted that there are expected economic gains for Korea, including a potential increase in Korean GDP by up to two percent.

USTR Kirk noted that the "recent initialing of a free trade agreement between Korea and the European Union has made that question [of when the Obama Administration will move on the KORUS FTA] more relevant for any business that competes directly with European firms in the Korean market." Regarding the Administration's stance on the FTA, USTR Kirk stated that President Obama has charged him "with finding a way to address our substantive issues of concern and move the Agreement forward." The issues of concern include US access to Korea's auto market (USTR Kirk noted that all the United States is asking for is "for our own auto companies to be able compete on a level playing field in the Korean market"), the treatment of US beef in the Korean market (South Korea currently only accepts US beef from cattle under 30 months of age under an industry-to-industry deal, provided the relevant specified risk materials are removed) and Korean non-tariff measures. According to USTR Kirk, the United States will

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continue to work with Korean officials, Members of the US Congress, and other stakeholders in its review of the KORUS FTA and in an effort to develop proposals to close the “gaps” in the agreement.

USTR Kirk’s vague statements on the KORUS FTA were echoed by President Obama at a recent meeting of the Economic Recovery Advisory Board (PERAB). During the closed-door PERAB meeting, President Obama noted that US trade policy is currently in “debilitating gridlock” and he called for a more aggressive approach. President Obama, however, did not offer any further insight on the status of the KORUS FTA or the pending agreements with Colombia and Panama, and he did not indicate when his Administration would move forward on the agreements. According to Administration officials, President Obama plans to discuss the KORUS FTA at a November 19, 2009 meeting with South Korean President Lee Myung-bak.

The Administration’s broad statements on the status of the KORUS FTA certainly reflect some of the concerns that several Members of Congress have repeated since US and Korean negotiators completed and signed the KORUS FTA in 2007. In response to USTR Kirk’s KORUS statements, for example, House Ways and Means Trade Subcommittee Chairman Sander Levin (D-MI) sent a November 6 letter to USTR Kirk stating that “more needed to be done to address non-tariff barriers that shut US automakers out of the Korean and Japanese car markets.” According to Rep. Levin, “given the current economic crisis, the Obama Administration must do everything it can to ensure US auto exports can compete on a level playing field” and he urged the Administration “to take all steps necessary to open the South Korean and Japanese markets to US autos.” In his letter, Rep Levin noted that for several years, Korea has “used a menu of rotating non-tariff barriers to keep out foreign competition, and that the market share for foreign brand autos in the Korean and Japanese markets is extremely low.” Co-signers of the November 6, 2009 letter included Sens. Carl Levin (D-MI) and Debbie Stabenow (D-MI), and Reps. Charles Rangel (D-NY), John Dingell (D-MI), Fred Upton (R-MI), Vernon Ehlers (R-MI), Dale Kildee (D-MI), Thaddeus McCotter (R-MI), Gary Peters (D-MI), Betty Sutton (D-OH), and Candice Miller (R-MI).

Senate Finance Committee Chairman Max Baucus (D-MT) has also stressed the importance of passing the pending KORUS FTA but has insisted that passage of the bilateral agreement is not possible until outstanding issues on beef and autos are resolved. According to Sen. Baucus, Korea must allow market access for US beef of all cuts and ages, and must address concerns on market access for US automobiles by removing regulatory barriers. He stated that once Korea “finds a way forward on these issues . . . I’m confident that Congress will consider and approve the agreement.” He also opined that “it would probably be easier to pass [pending] trade deals in the first half of 2010.”

As end-2009 approaches, the likelihood that the Administration will submit implementing legislation on the KORUS FTA to Congress has all but disappeared, and at this stage, given Congress' and the Administration's current focus on other issues and the Administration's vague and non-committal statements on the status of the agreement, the KORUS FTA will not see any forward movement until 2010. Even then, it is unclear if the Administration will be ready to move on the agreement without first responding to legislators' concerns on the Korean auto market and non-tariff barriers, and with the November 2010 Congressional elections, legislators may not be able to focus on the agreement during the second half of 2010. These factors, and the lack of clear direction from the Administration on the state of US trade policy in general, make it difficult to craft a possible timeline for consideration and approval of the KORUS FTA. It is safe to say, however, that as long as US trade policy remains on the "backburner" for the Administration, the bilateral agreement with Korea (and Colombia and Panama) will remain victim to an undefined US trade strategy.

### **United States Initiates NAFTA Dispute with Mexico on Mexican Refusal to Move Tuna-Dolphin Dispute from WTO to NAFTA**

On November 5, 2009, the Office of the United States Trade Representative (USTR) announced that the United States has requested North American Free Trade Agreement (NAFTA) dispute settlement consultations with Mexico regarding "Mexico's failure" to move its "dolphin safe" labeling dispute from the World Trade Organization (WTO) to the NAFTA. At issue is the 1990 US Dolphin Protection Consumer Information Act, which sets out labeling standards for tuna products that are exported from or offered for sale in the United States. The act bans the use of the "dolphin-safe" label for tuna harvested with purse-seine nets because of dolphins trapped in the nets. In 1997, the legislation was amended by the International Dolphin Conservation Program Act, which allowed the importation into the United States of tuna caught using purse-seine nets if no observed mortality occurred. The modifications to this legislation took place after Mexico convinced US authorities that new fishing methods adopted by Mexican fishing fleets have substantially reduced the number of dolphins killed each year with purse-seine nets. However, in 2007, a US court ruled that "dolphin-safe" labeling requirements must be interpreted as meaning that the tuna was not harvested with purse-seine nets, and that no dolphins were killed or seriously injured when the tuna were caught.

Mexico charges that US "dolphin-safe" labeling measures block its access to the US market and discriminate against Mexican tuna in favor of US tuna producers and other tuna competitors in violation of the national treatment and most favored nation (MFN) obligations under the General Agreement on

Tariffs and Trade (GATT 1994). In addition, Mexico considers that US “dolphin-safe” labeling regulations have the effect of creating unnecessary obstacles to trade in violation of the WTO Agreement on Technical Barriers to Trade (“TBT Agreement”). The TBT Agreement provides that measures should not be more trade restrictive than necessary to fulfill a legitimate objective and not create unnecessary obstacles to trade.

On March 9, 2009 Mexico requested that a WTO panel be established to review its claims. In response, on March 24, 2009, the United States invoked the NAFTA choice of forum provision (Article 2005(4) of the NAFTA). On April 20, 2009, the WTO Dispute Settlement Body established a WTO panel to review Mexico's claims that US dolphin safe labeling provisions are inconsistent with US obligations under the WTO Agreement. According to USTR, “although Mexico agreed to postpone selecting panelists as it explored other settlement options with the United States, those efforts have not yet led to a resolution of the dispute and Mexico has resumed the WTO proceedings.”

According to a USTR spokesperson, the United States regrets that Mexico is continuing its WTO case despite the fact that the United States has invoked its right under NAFTA provisions to have the dispute moved from the WTO to the NAFTA [and] in resuming its current proceedings in the WTO, Mexico continues to disregard its obligation to the United States to have recourse solely under the NAFTA for this dispute.” USTR officials argue that the NAFTA requires that in a dispute of this nature, if the responding party so requests, the NAFTA, rather than any other forum, should be the sole venue of any dispute. Consequently, US officials argue that the NAFTA, and not the WTO, should be the forum to hear Mexico's complaint on US dolphin safe labeling of tuna and tuna products.

It is unclear if and when the United States and Mexico will hold consultations on the dispute under the NAFTA, although we will continue to monitor this issue and will update you on any further developments as they occur.

## Multilateral

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### *Multilateral Highlights*

#### **WTO Establishes Panel to Examine US COOL Requirements**

On November 19, 2009, the World Trade Organization (WTO) Dispute Settlement Body (DSB) established a panel to determine whether the United States' Country of Origin Labeling (COOL) requirements for certain products (DS384) are in compliance with WTO rules. The measure is the result of complaints by Canada and Mexico that the US COOL requirements discriminate against Canadian and Mexican livestock exporters. The panel is now expected to issue a decision within six months and the DSB to approve this decision within nine months after the appointment of the panel. On October 9, 2009, Mexico joined Canada in its panel submission request to the WTO DSB, challenging the US COOL provisions included in the US Agricultural Marketing Act of 1946 as amended by the Food, Conservation and Energy Act of 2008 (the 2008 Farm Bill), and as implemented through the Interim Final Rule of August 28, 2008, which took effect on September 30, 2008. The United States published the Final Rule in the Federal Register on January 15, 2009, and the rule went into effect on March 16, 2009.

In its panel submission request, Canada and Mexico argued that US COOL requirements discriminate against Canadian and Mexican exporters because the regulations, among other things, make it mandatory to inform consumers at the retail level of the country of origin of COOL covered commodities, including poultry, beef, pork and certain vegetables. They also argued that COOL regulations state that the eligibility for a designation of a covered commodity as exclusively having a US origin can only be derived from an animal that was exclusively born, raised and slaughtered in the United States, which would exclude such a designation in respect of beef or pork derived from livestock that is exported to the United States for feed or immediate slaughter." According to Mexico and Canada, the mandatory US COOL regulations are inconsistent with several WTO agreements, including: (i) Articles III:4, IX:4, X:3 of General Agreement on Tariffs and Trade (GATT) 1994; (ii) Article 2 of the WTO Agreement on Technical Barriers to Trade (TBT Agreement) or, in the alternative, Articles 2, 5 and 7 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement); and (iii) Article 2 of the WTO Agreement on Rules of Origin.

## **China Blocks First Requests for Dispute Panel to Rule on Chinese Export Restrictions for Various Raw Materials**

On November 19, 2009, China blocked the first request by the United States, Mexico and the EU to establish a panel to examine China's export quotas and duties on certain raw materials used for the production of steel and chemicals (DS394). On November 4, 2009, the United States, along with Mexico and the EU, submitted a panel request to the World Trade Organization (WTO) Dispute Settlement Body (DSB), challenging China's export restrictions on several raw materials. The United States had requested consultations with China on the matter on June 23, 2009, although the panel request indicates that the consultations were unsuccessful in resolving the issue of China's export restrictions. The DSB will automatically establish the panel if and when the United States and the other parties make a second panel request at the next DSB meeting on December 21, 2009.

In its request for consultations, the United States argued that China imposes quantitative export restrictions on exports of bauxite, coke, fluor spar, magnesium, manganese, silicon metal, silicon carbide, yellow phosphorus, and zinc. According to the Office of the United States Trade Representative (USTR), these raw materials are key inputs for numerous downstream products in the steel, aluminum, and chemicals sectors. Specifically, USTR contends that the restrictions take the form of export quotas on bauxite, coke, fluor spar, silicon carbide, and zinc, as well as certain intermediate products incorporating some of these inputs. USTR also argues that China imposes export duties on several raw materials and imposes other restrictions such as export fees. China contends, however, that the restrictions are justified on environmental grounds and that they are not creating unfair competition between foreign and Chinese companies." Chinese officials also contend that the export restrictions are accompanied by restrictions on domestic consumption of the raw materials.

China expressed disappointment that the United States, the EU and Mexico had chosen to move forward with requests for a panel and said that it was ready to communicate further with the complainants but that it was not in a position to agree to the establishment of a panel at this time.

The raw materials dispute is the latest dispute that between the United States and China at the WTO. To date, the United States has brought eight WTO disputes against China and China has brought four WTO disputes against the United States. Other US-China WTO disputes involve restrictions imposed by China on the importation and distribution of publications, audiovisual products, sound recordings and films (DS363), US measures affecting poultry imports from China (DS392), Chinese measures affecting the protection and enforcement of intellectual property rights (DS362), and Chinese measures affecting

imports of automobile parts (DS339/340/342). Observers opine that the latest dispute on raw materials will likely be contentious, in part due to the EU's and Mexico's involvement and in part due to recent bilateral tensions that have cropped up between the United States and China on a variety of issues.

### **WTO DSB Forms Panel to Rule on US Challenge on EU Measures Affecting US Poultry Meat and Poultry Meat Products**

On November 19, 2009, the World Trade Organization (WTO) Dispute Settlement Body (DSB) agreed to form a dispute settlement panel on the US challenge against certain measures by the EU affecting US poultry products (DS389). The DSB had considered the US request for a panel for the first time at its October 23, 2009 and as a result of the United States' second request, the DSB agreed to establish a panel. Australia, China, Korea and Norway reserved their third party rights to participate in the panel's proceedings.

The United States contends that the EU prohibits the import of poultry treated with any substance other than water unless that substance has been approved by the EU. According to the US complaint, the EU has not approved any other substance and consequently, the EU prohibits the import of poultry that has been processed with chemical treatments (“pathogen reduction treatments” or PRTs) designed to reduce the amount of microbes on the meat, effectively prohibiting the shipment of virtually all US poultry to the EU. The United States argues that the EU has not published or otherwise made available the process for approving a substance. The United States also notes that the EU also maintains a measure regarding the marketing standards for poultry meat, which defines “poultrymeat” as only “poultrymeat suitable for human consumption, which has not undergone any treatment other than cold treatment.”

The US-EU poultry issue is a long-standing one. In 2002, the United States requested the European Commission to approve the use of four PRTs in the production of poultry intended for export to the EU: acidified sodium chlorite, trisodium phosphate, peroxyacids, and chlorine dioxide. The EU has not approved any of these four PRTs and has rejected the approval of their use. The United States argues that the EU's failure to approve is despite the fact that various EU agencies have issued scientific reports regarding a number of different aspects related to the processing of poultry with these four PRTs that did not find any scientific basis for banning the use of these PRTs and that concluded that the importation and consumption of poultry processed with these four PRTs does not pose a risk to human health. In May 2008, the European Commission submitted a proposal to the EU Standing Committee on the Food Chain and Animal Health (SCoFCAH) that purported to approve the import into the EU of poultry treated with these four PRTs. In June 2008, SCoFCAH rejected the Commission's proposal unanimously and in

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December 2008, the EU Agricultural and Fisheries Council rejected the same Commission proposal by the same tally as SCoFCAH.

The US challenge charges that an EU ban on antimicrobial washes is not based on sound science and is not necessary to protect human life as required by the Agreement on the Application of Sanitary and Phytosanitary Measures. The United States argues that the EU measures appear to be inconsistent with: (i) SPS Agreement Articles 2.2, 5.1, 5.2, 7, and 8, and Annexes B(1), B(5), and C(1); (ii) Agriculture Agreement Article 4.2; (iii) GATT 1994 Articles III:4, X:1, and XI:1; and (iv) TBT Agreement Article 2.1.

### **WTO DSB Authorizes Brazil to Impose Countermeasures Against US in Cotton Dispute**

On November 19, 2009, the World Trade Organization (WTO) Dispute Settlement Body (DSB) granted authorization to Brazil to impose countermeasures against the United States in the long-standing US-Brazil cotton dispute (DS267). On August 31, 2009, the WTO issued arbitration reports in the US-Brazil cotton dispute. The WTO arbitration Panel ruled that the United States has failed to comply with an earlier WTO Panel decision that found that US cotton subsidies and support did not comply with US multilateral obligations. The arbitration Panel authorized Brazil to initially impose retaliatory measures worth USD 294.7 million on a range of US imports. The arbitration Panel's decision on the retaliation amount is less than the USD 2.68 billion initial retaliation amount that Brazil had requested. The United States, meanwhile, had argued that Brazil's retaliatory measures should not exceed USD 30 million. Arbitrators to the US-Brazil dispute approved a formula for Brazil to calculate the annual amount of sanctions based on current US spending for cotton subsidies; using US subsidy spending in FY 2006 as a reference, Brazil, as noted, could retaliate up to USD 294.7 million on a range of US imports.

On November 19, 2009, the DSB agreed to grant Brazil authorization to impose countermeasures consistent with the Arbitrator's August 2009 decisions. On November 9, 2009, the Brazilian Foreign Trade Chamber (CAMEX) published in the Official Gazette Resolution n. 74, requesting public comments on the products included in Brazil's draft retaliation list against imports originating from the United States. CAMEX Resolution n. 74 requested comments regarding a preliminary list of a long list of US products that would face higher import tariffs, some up to 100 percent, when imported into Brazil, including bar code readers, methanol, textile goods, automotive and electronic goods, and dairy products, among others. CAMEX expects to have the final list by November 30, 2009 or early December 2009.

Brazil's draft list includes the products classified under the following tariff headings of Mercosur's Nomenclature (NCM):

**PRELIMINARY LIST OF US PRODUCTS FACING COUNTERMEASURES**

NCM	Description
0303.51.00	-- Herrings ( <i>Clupea harengus</i> , <i>Clupea pallasii</i> )
0303.71.00	-- Sardines ( <i>Sardina pilchardus</i> , <i>Sardinops</i> spp.), sardinella ( <i>Sardinella</i> spp.) and brisling or sprats ( <i>Sprattus sprattus</i> )
0402.10.10	Milk and cream, concentrated or containing added sugar or sweetener
0404.10.00	- Whey and modified whey, concentrated or containing added sugar or other sweetener
0504.00.13	From pigs
0802.21.00	In Shell
0802.31.00	In Shell
0802.32.00	Shelled
0806.20.00	Dried raisins
0808.20.10	Pears
0809.20.00	Cherries
0809.40.00	- Plums and sloes
1001.90.90	Others
1105.20.00	- Flakes, granules and pellets
1302.12.00	-- Of licorice
1302.13.00	--Of hops
1302.19.99	Others

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<b>NCM</b>	<b>Description</b>
1502.00.11	Not refined
1507.90.90	Others
1514.11.00	-- Crude oil
1514.19.10	Refined
1516.20.00	- Vegetable fats and oils and their fractions:
1702.19.00	-- Others
2005.20.00	- Potatoes
2009.90.00	- Mixture of Juices
2103.20.10	In containers holding less than 1 kg
2103.90.91	In containers holding less than 1 kg
2106.10.00	- Protein concentrates and textured protein substances
2106.90.10	Compound beverages preparations
2106.90.30	Vitamins
2106.90.50	Unsweetened chewing gum
2106.90.90	Others
2202.90.00	- Others
2303.20.00	Beet-pulp and other waste of sugar Manufacture
2503.00.10	In bulk

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<b>NCM</b>	<b>Description</b>
2815.12.00	-- In aqueous solution (Soda lye or liquid soda)
2905.11.00	-- Methanol (Methyl alcohol):
2905.13.00	-- Butan-1-ol ( <i>n</i> -Butyl alcohol)
2929.10.21	Mixtures of isomerus
3003.90.55	Paracetamol
3004.20.19	Others
3004.20.79	Others
3004.31.00	-- Containing insulin
3004.39.39	Others
3004.40.90	Others
3004.50.50	Vitamin D3
3004.90.19	Others
3004.90.49	Others
3005.10.90	Others
3006.10.90	Others
3006.40.12	Others Dental cements and other dental fillings;
3303.00.20	toilet waters
3304.10.00	- Lip make-up preparations

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<b>NCM</b>	<b>Description</b>
3304.99.10	Beauty creams and tonic lotions
3304.99.90	Others
3305.10.00	- Xampus
3305.90.00	- Others
3306.10.00	- Dentifrices
3306.90.00	- Others
3307.10.00	- Pre-shave or After-Shave Preparations
3307.20.90	Others
3307.90.00	- Others
3401.19.00	-- Others
3402.90.39	Others
3707.90.21	Of thermo plastic resins
3901.20.29	Others
3901.90.90	Others
3902.10.20	Without weight
3904.10.10	Of suspension process
3917.40.90	Others
3923.10.90	Others

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<b>NCM</b>	<b>Description</b>
3923.29.90	Others
3923.30.00	- Carboys, bottles, flasks, and similar activities
3923.50.00	- Stoppers, lids, caps and other devices
3926.90.90	Others
4011.10.00	- Of a kind used in automobiles for passengers (including station wagons)
4011.20.90	Others
4011.63.90	Others
4011.94.90	Others
4016.93.00	-- Gaskets, washers and other seals
4016.95.90	Others
4703.21.00	-- Of conifers
4811.41.10	In strips or rolls superior to 15 cm or in folds that do not exceed 360 mm,
4813.20.00	- In rolls of length superior to 5 cm
4908.90.00	- Others
5201.00.20	Cotton (debulhado)
5201.00.90	Others
5203.00.00	Cotton, carded or combed
5204.11.31	Of two ends

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NCM	Description
5205.11.00	-- Not exceeding 714,29 decitex
5208.21.00	-- Plain weave, not exceeding 100 g/m <sup>2</sup>
5208.31.00	-- Plain weave, not exceeding 100 g/m <sup>2</sup> 100 g/m <sup>2</sup>
5208.32.00	-- Plain weave, not exceeding 100 g/m <sup>2</sup> 100 g/m <sup>2</sup>
5208.33.00	-- Thread with texture not exceeding 4
5208.42.00	-- Weave, with weight superior to 100 g/m <sup>2</sup>
5208.49.00	-- Other fabrics
5208.52.00	-- Weave, with weight superior a 100 g/m <sup>2</sup>
5208.59.90	Others
5209.22.00	-- Four thread twill
5209.29.00	-- Others fabrics
5209.32.00	-- 4-Thread twill not
5209.39.00	-- Other fabrics
5209.41.00	-- Plain Weave
5209.42.10	Denim <i>indigo blue</i> Color Index 73.000
5209.49.00	-- Other fabrics
5209.51.00	-- Plain Weave
5209.59.00	-- Other fabrics

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<b>NCM</b>	<b>Description</b>
5210.21.00	-- Plain Weave
5210.41.00	-- Plain Weave
5210.51.00	-- Plain Weave
5211.39.00	-- Other fabrics
5211.43.00	-- Other fabrics
5211.49.00	-- Other fabrics
5211.59.00	-- Other fabrics
5212.13.00	-- Dyed
5212.15.00	-- Printed
5212.24.00	--Of different colors
5407.42.00	-- Dyed
5601.21.90	Others ( <i>ouates</i> )
5603.12.10	Of polyethylene of high density
5603.12.90	Others
5603.13.90	Others
5603.14.90	Others
5608.90.00	- Others
5703.20.00	- Of nylon or other polyamide

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<b>NCM</b>	<b>Description</b>
5806.31.00	-- Of cotton
5903.90.00	- Others
5907.00.00	Other fabrics
6006.21.00	-- Crusted
6006.22.00	-- Dyed
6006.23.00	-- Of various colors
6101.20.00	- Of cotton
6102.20.00	- Of cotton
6104.32.00	-- Of cotton
6104.42.00	-- Of cotton
6104.62.00	--Of cotton
6106.10.00	- Of cotton
6109.10.00	- Of cotton
6110.20.00	- Of cotton
6111.20.00	- Of cotton
6115.95.00	-- Of cotton
6116.10.00	- Covered, of plastic
6116.92.00	-- Of cotton

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<b>NCM</b>	<b>Description</b>
6203.42.00	-- Of cotton
6204.42.00	-- Of cotton
6204.62.00	-- Of cotton
6205.20.00	- Of cotton
6206.30.00	- Of cotton
6207.91.00	-- Of cotton
6213.20.00	- Of cotton
6302.21.00	-- Of cotton
6302.31.00	--Of cotton
6303.92.00	-- Of synthetic fibers
6307.90.10	Of fake fabric
6307.90.90	Others
7019.39.00	-- Others
7019.59.00	-- Others
7113.19.00	-- Of others precious metals (plaqué)
7208.39.90	Others
8212.10.20	Appliances
8212.20.10	Laminas

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<b>NCM</b>	<b>Description</b>
8407.21.90	Others
8415.90.00	- Parts
8418.40.00	- Freezers, vertical armoire type with capacity not exceeding 900 liters
8418.50.10	Freezers
8433.11.00	-- Motorized
8471.90.12	Bar code readers
8506.10.10	Batteries (alkaline)
8506.80.90	Others
8516.60.00	- Other ovens, kitchen ovens, grillers and others
8517.12.31	Portable
8517.18.10	Interphones
8518.10.90	Others
8518.21.00	-- Loudspeakers
8518.22.00	-- Loudspeakers
8518.30.00	- Headphones
8518.40.00	- Frequency electric amplifiers
8518.50.00	- Electric sound amplifiers sets
8521.90.90	Others

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NCM	Description
8525.80.19	Others
8525.80.29	Others
8527.21.90	Others
8528.49.29	Others
8703.21.00	-- Of a cylinder capacity not exceeding 1.000 cm <sup>3</sup>
8703.23.10	With transport capacity for seated passengers not exceeding six persons, including motorist
8703.24.10	With transport capacity for seated passengers not exceeding six persons, including motorist
8703.24.90	Others
8703.33.10	With transport capacity for seated passengers not exceeding six persons, including motorist
8711.50.00	- With alternative motor of cylinder capacity superior to 800 cm <sup>3</sup>
8903.92.00	-- Motor ships, except with motor outboard type
8903.99.00	-- Others
9001.30.00	- Contact lenses
9004.10.00	- Sunglasses
9008.30.00	- Other projectors of fixed images
9018.19.10	Endoscopies
9018.19.80	Others

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<b>NCM</b>	<b>Description</b>
9018.19.90	Parts
9018.32.19	Others
9018.39.10	Needles
9018.39.24	Catheters
9018.39.29	Others
9018.90.94	Endoscopies
9019.20.10	Of oxygen therapy
9019.20.90	Others
9021.10.20	Apparatus and devices for fractures
9021.31.10	Femoral appliances
9021.31.90	Others
9021.39.19	Others
9021.39.80	Others
9021.90.89	Others
9021.90.99	Others
9022.14.90	Others
9022.30.00	-Ray X tubes
9022.90.80	Others

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<b>NCM</b>	<b>Description</b>
9022.90.90	Parts and accessories of ray x apparatus
9102.11.10	Metal common case
9401.20.00	- Seats, of a kind used for motor vehicles
9401.30.90	Others
9403.70.00	- Furniture of plastics
9506.91.00	-- Articles and equipment for gymnastics or athletic activities
9603.21.00	-- Toothbrushes, including dental-plate brushes
9701.10.00	- Paintings, drawings and pastels

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