



February 2010

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

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## Summary of Reports

### United States

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#### *United States Highlights*

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

- House Ethics Committee Admonishes Chairman Rangel for Accepting Corporate-Sponsored Trips to Caribbean
- Senators Urge DOC to Investigate China's Alleged Currency Manipulation and Whether Currency Practices are Countervailable Subsidy
- AUSTR for China Affairs Returns to Private Sector
- GAO Releases Report on Agency Use of Recovery Act Funds
- Annual Economic Report Includes Trade Chapter, Offers Little Detail on Administration's Trade Policy
- USTR Extends Filing Deadlines for Comments on 2010 Special 301 Review
- Senate Confirms Several Trade-Related Treasury Nominations
- US, Canada Reach Agreement on Procurement, "Buy American"
- Commerce, Treasury Secretaries Unveil Some Details, Little Substance of Administration's New Export Promotion Initiatives

### Free Trade Agreements

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#### *Free Trade Agreements Highlights*

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

- Rep. Mack Introduces Resolution Calling on Quick Passage of FTAs

### Multilateral

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#### *Multilateral Highlights*

- WTO Appellate Body Releases 2009 Annual Report
- EU Requests WTO for Authorization to Impose Sanctions on US Over "Zeroing"

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## Reports in Detail

### United States

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#### *United States Highlights*

#### **House Ethics Committee Admonishes Chairman Rangel for Accepting Corporate-Sponsored Trips to Caribbean**

On February 26, 2010, the House Committee on Standards of Official Conduct admonished House Ways and Means Committee Chairman Charles Rangel (D-NY) for violating the House gift rule by accepting corporate-sponsored trips to conferences in Antigua and Barbuda in November 2007 and St. Maarten in November 2008. The Committee claimed that it had no proof that Chairman Rangel knew that the conferences were underwritten by corporations, but stated that two members of Chairman Rangel's staff knew that corporations had underwritten at least some of the costs of the legislator's travel. In response to the announcement, Chairman Rangel stated that Members of Congress should not be held accountable for mistakes of their staff. The Committee's announcement did not address ongoing investigations by the Ethics Committee into accusations that Chairman Rangel failed to pay federal taxes on income from a rental in the Dominican Republic, the use of four rent-controlled apartments and his alleged role in retaining certain tax benefits for a company executive who pledged USD 1 million for the Rangel School.

#### **Senators Urge DOC to Investigate China's Alleged Currency Manipulation and Whether Currency Practices are Countervailable Subsidy**

In a February 25, 2010 letter to Secretary of Commerce Gary Locke, 15 Senators urged the Department of Commerce (DOC) "to finally move forward with an investigation of China's currency manipulation. The legislators, led by Sens. Charles Schumer (D-NY) and Lindsey Graham (R-SC), are urging DOC to launch an investigation into the US manufacturing industry's allegations that China's actions with respect to its currency constitute a countervailable subsidy. Senators signing the letter include Sens. Robert Byrd (D-WV), Carl Levin (D-MI), Barbara Mikulski (D-MD), Russ Feingold (D-WI), Olympia Snowe (R-ME), Susan Collins (R-ME), Sam Brownback (R-KS), Jim Bunning (R-KY), Debbie Stabenow (D-MI), Ben Cardin (D-

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MD), Sherrod Brown (D-OH), Bob Casey (D-PA) and Arlen Specter (D-PA), in addition to Sens. Schumer and Graham.

In their letter, the Senators stated that “there can be no doubt that China’s policy of large-scale intervention in the exchange markets and the significant undervaluation of its currency acts as a subsidy to Chinese exports to the United States,” and they referenced an ongoing DOC investigation involving subsidized exports of Chinese paper products and the effect such subsidies, including China’s currency manipulation, are having on the US domestic paper industry. According to the legislators, the domestic industry in the paper case “has provided sufficient evidence such that DOC is required by law to investigate whether China’s currency manipulation is a countervailable subsidy.” The letter states that if DOC agrees to investigate the Chinese government’s actions on currency in the paper case, the results of that investigation could then be cited in other cases alleging that currency manipulation is a subsidy which “could ultimately lead to a situation where duties are placed on a wide range of Chinese products and ultimately cause the Chinese government to reform its currency practices.”

This is not the first time that the Senators have sent such a letter to DOC. In a November 19, 2009, letter to DOC, Sens. Schumer and Graham urged the Department to fully investigate allegations that China’s currency manipulation is a countervailable subsidy. DOC responded to that letter in December 2009, noting “that subsidy allegations involving China’s currency practices would be assessed no differently than any other subsidy allegation.” In their most recent letter, however, the Senators state that DOC’s “lack of action on this issue . . . suggests otherwise.”

DOC has not issued any responses or statements that it intends to follow the Senators’ recommendations with regards to China’s currency. Some observers opine that if DOC does not determine to start investigating currency subsidy claims, either on its own or in response to Congressional pressure, the Court of International Trade (CIT) could order DOC to do so. Other observers opine that DOC could initiate the investigation and could determine that China’s alleged currency manipulation is not a countervailable subsidy. In either case, the Senators’ letter is likely to spur further debate on the issue, especially among legislators during an election year. To date, the Obama Administration has not labeled China a currency manipulator in its semi-annual currency manipulation reports to Congress as prepared by the Department of Treasury; nonetheless, some arguments within Congress on China’s alleged currency manipulation appear to be getting more vocal and this latest letter is proof that some legislators are not content to let the issue fade away and will instead push to have DOC investigate their claims and/or introduce (or re-introduce) legislation meant to address China’s alleged currency manipulation.

## **AUSTR for China Affairs Returns to Private Sector**

According to several reports, Timothy Stratford has left the position of Assistant United States Trade Representative (AUSTR) for China Affairs to join the law firm of Covington & Burling LLP at the firm's office in Beijing, China. A Covington & Burling press statement noted that that Stratford "would focus on advising international clients doing business in China and assisting Chinese companies seeking to expand their business globally." Stratford joined USTR in September 2005 and was responsible for managing US trade policy with China, Taiwan, Hong Kong, Macao, and Mongolia. Prior to USTR, Stratford served as General Counsel for General Motor's China operations and was Minister Counselor for Commercial Affairs at the US Embassy in Beijing.

The Office of the USTR is now looking for Stratford's replacement and has posted a job announcement that notes that the AUSTR position has been designated as a "Senior Executive Service" (SES) position which would require that applicants who are not already in the SES to be certified by a Qualifications Review Board of the Office of Personnel Management before appointment to this position.

## **GAO Releases Report on Agency Use of Recovery Act Funds**

In February 2010, the Government Accountability Office (GAO) released a report on the American Recovery and Reinvestment Act of 2009 (ARRA) in which it assessed the extent to which selected US government agencies have obligated and spent funds for ARRA projects ("Recovery Act: Project Selection and Starts Are Influenced by Certain Federal Requirements and Other Factors," GAO-10-383). The ARRA provided USD 787 billion in spending and tax provisions, and more than a third of the funds were slated for projects and activities, including construction and certain research projects.

GAO was asked to identify key federal requirements that apply to ARRA projects and to assess the extent to which selected agencies have obligated and spent funds for ARRA projects, as well as federal requirements and other factors that have affected, or are expected to affect, project selection and start dates. GAO requested data from 27 agencies that received appropriations under the ARRA as well as from officials responsible for implementing ARRA projects in 16 states and the District of Columbia. We highlight below the GAO's findings:

- According to the GAO, as of December 31, 2009, the 27 federal agencies GAO reviewed had obligated a total of 63 percent of the approximately USD 309 billion that was appropriated by the ARRA for projects and activities (USD 194 billion).

- As of December 31, 2009, the agencies reported that they had spent 20 percent of their appropriated funds (USD 61 billion). Agency officials report, however, that the amount reported as spent “may not accurately reflect the amount of work done on a given project because payment for federal projects generally occurs after work is completed, and the recipient may not yet have submitted an invoice for payment.”
- The Departments of Commerce, Education, Homeland Security, and Housing and Urban Development, as well as the Environmental Protection Agency (EPA) reported that “Buy American” provisions of the ARRA had “affected their ability, or their grantees’ ability, to select or start some ARRA projects.” The report cites as an example a project within Homeland Security’s Electronic Baggage Screening Program “that was slowed as officials awaited a Buy American waiver, which became necessary when the contractor learned that US-made components would have hindered the integration of an airport’s security systems.”
- The Departments of Commerce, Energy, and Housing and Urban Development, and the EPA reported that Davis-Bacon prevailing wage requirements affected the timing of some of their ARRA projects.
- The Departments of Commerce and Transportation reported that the ARRA affected the selection and start of projects because of various state historic preservation rules, regulations and reviews.
- The report notes that other factors affecting the ability of federal agencies “to quickly select or start projects” included challenges associated with starting entirely new programs, states’ budgeting issues, higher staff workloads because of the ARRA, and seasonal issues or weather, among others.
- The report also notes that federal agencies have reported that federal requirements did not affect the timing of certain projects because, in certain cases, the award processes for ARRA projects “were not substantially different from the processes they follow for non-ARRA projects,” and because some agencies had either “intentionally selected projects that had already satisfied key federal requirements, such as environmental reviews, or modified existing contracts or awarded funding to projects that had already undergone peer review during an earlier review process.”

### **Annual Economic Report Includes Trade Chapter, Offers Little Detail on Administration’s Trade Policy**

In February 2010, the White House Council of Economic Advisers issued its 2010 “Economic Report of the President Together With the Annual Report of the Council of Economic Advisors,” an annual

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economic report that includes a section on US trade. Chapter 10 of the report (“Fostering Productivity Growth through Innovation and Trade”) states that “based on an understanding that progress springs from achieving the proper balance between generous rewards for the creation of new ideas and encouraging the best of those ideas to spread widely, the Administration has formulated a comprehensive „innovation agenda” that . . . [includes] engaging the world economy in ways that ensure that the United States achieves the maximum benefits from trade’s productivity-enhancing potential.” We analyze below the components of this “innovation agenda” as related to US trade.

- **Trade Enforcement.** The report states that “the best way to guarantee reliable [market] access is through negotiated trade agreements and consistent enforcement of existing trade rules,” and notes that “robust enforcement of trade rules” is an important part of US engagement in the world economy. The report includes several examples of trade enforcement actions that the Administration has taken recently, including continuously “pressing a World Trade Organization [WTO] case that challenged China’s treatment of US auto parts exports,” challenging China’s use of certain subsidies and taxes to keep input costs low for firms in China, and adding Canada to the 2009 Priority Watch List in its annual “Special 301” report on intellectual property protection. The report also highlights the importance of protecting intellectual property rights (IPR) to spur and protect US investment in technology and innovation.
- **Doha Round.** The report notes that “the Administration supports a strong market-opening agreement for both goods and services in the WTO Doha Round negotiations,” although does not offer any details on the US position in the multilateral negotiations or if the United States is willing to make new offers as part of the Doha talks.
- **Free Trade Agreements (FTAs).** On FTAs, the report states that the United States “is continuing to work with US trade partners on potential free trade agreements [because] negotiated trade deals often involve substantial improvements in access for US exports to other countries relative to the market opening made by the United States.” The report notes that the Administration is involved in the negotiations of the Trans-Pacific Partnership (TPP) FTA although the report does not offer much detail other than that “the [TPP FTA] will be a high-standards agreement that expands trade in a way that is beneficial to the economy, workers, small businesses, and farmers, and is consistent with the values of the United States.” The report does not mention the Administration’s views on the pending FTAs with Colombia, Panama and Korea.
- **Other Issues.** The report states that “a progressive tax rate combined with trade allows those who realize substantial income gains from globalization to still prosper a great deal relative to the state

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where there is no trade and incomes are taxed at a flat rate [and] does so while making sure that those who face lower incomes from globalization also obtain benefits.” The report also notes that “there needs to be a strong social policy to support workers who lose their jobs due to shifts in production and specialization,” and expresses the Administration’s support for Trade Adjustment Assistance (TAA), worker retraining and temporary relief programs combined with progressive taxation.

Since President Obama began his term of office, the trade community has waited for Administration officials to announce the United States’ trade policy. Several promises and one year later, the Administration has still not provided a detailed roadmap of the direction it will take on US trade, and the annual “Economic Report of the President Together With the Annual Report of the Council of Economic Advisors” offers little insight and detail on the Administration’s trade stance. Although the report does include a chapter on trade, the majority of the discussion focused on trade enforcement and how effective enforcement of trade agreements and protection of IPR could help the US economy and US exporters. And though the report mentions the TPP FTA and the WTO Doha Round, it does not provide sufficient detail on how the Administration will approach these bilateral and multilateral trade agreements: on the TPP FTA, the report only notes that it will be a “high-standards agreement” and on the Doha Round, the Administration indicated its support for completion of the multilateral negotiations although it does not indicate what new concessions (if any) it is willing to make to inject life into the comatose Round (indeed, several US trade partners have become increasingly frustrated with the United States’ limited involvement in the Doha Round). In addition, the report does not include a discussion on the fate of the pending FTAs with Korea, Panama and Colombia. Some observers worry that the general discussion on trade included in the annual economic report may be the closest the Administration will get to a “comprehensive” US trade policy, although others point out that the Administration is scheduled to release its annual Trade Policy Agenda in March 2010, at which point, the Administration may provide a more detailed description of how it intends to approach US trade policy.

### **USTR Extends Filing Deadlines for Comments on 2010 Special 301 Review**

In a January 12, 2010 Federal Register (FR) notice, the Office of the United States Trade Representative (USTR) announced a hearing and requested written submissions from the public in order to help it identify countries for its annual Special 301 report that deny adequate and effective protection of intellectual property rights (IPR) or deny fair and equitable market access to US persons who rely on intellectual

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property protection. USTR is requesting comments “that are relevant to the decision on whether a particular trading partner should be identified as a priority foreign country . . . or placed on the Priority Watch List or Watch List.” Interested parties, including foreign governments, who want to testify at the public hearing must submit a request to testify at the hearing and a short hearing statement. **On February 12, 2010, USTR announced extended deadlines for filing comments due to inclement weather.**

We include the procedural deadlines (including the extended filing deadlines) below:

- **February 18, 2010** – For interested parties, except for foreign governments: Submit written comments, requests to testify at the Special 301 Public Hearing, and hearing statements.
- **February 23, 2010** – For foreign governments: Submit requests to testify at the Special 301 Public Hearing.
- **February 26, 2010** – For foreign governments: Submit written comments and hearing statements.
- **March 3, 2010, and additional days from March 4-8, 2010 as necessary** – Special 301 Committee Public Hearing for interested parties, including representatives of foreign governments, held at the United States International Trade Commission.
- **April 30, 2010 (est.)** – In accordance with statutory requirements, USTR will publish the 2010 Special 301 Report on or about April 30, 2010.

### **Senate Confirms Several Trade-Related Treasury Nominations**

On February 11, 2010, the Senate confirmed Marisa Lago to serve as the Department of the Treasury's Assistant Secretary for International Markets and Development. In this position, Lago is responsible for leading Treasury's role on the Committee on Foreign Investment in the United States (CFIUS) and will also direct Treasury's portfolio on international financial services regulation, trade, banking and securities, development, technical assistance and climate finance. Prior to this position, Lago served as the President and Chief Executive Officer of Empire State Development. She has also served as the Global Head of Compliance for Citigroup's corporate and investment bank, as the head of the Office of International Affairs for the US Securities and Exchange Commission, as Boston's Chief Economic Development Officer, and as General Counsel for New York City's Economic Development Corporation. She earned a J.D. cum laude from Harvard Law School, and a B.S. in physics from Cooper Union.

The Senate also confirmed Charles Collyns to serve as the Department of the Treasury's Assistant Secretary for International Finance. In this position, Collyns is responsible for leading Treasury's work on

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international monetary policy, international financial institutions, coordination with the G-7/G-8 and G-20, and regional and bilateral economic issues. Prior to this, Collyns served as the Deputy Director of the Research Department at the International Monetary Fund (IMF). He has also authored several publications on international macroeconomics. He received a Doctorate in Economics from Oxford University after obtaining first class honors as an undergraduate at Cambridge University.

### **US, Canada Reach Agreement on Procurement, “Buy American”**

In a February 5, 2010 joint statement, United States Trade Representative (USTR) Ron Kirk and Canadian Minister of International Trade Peter Van Loan announced that the United States and Canada have reached an agreement regarding US and Canadian procurement, and the “Buy American” regulations that the United States implemented in 2009. On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111–5), which included Buy American provisions that prohibited the use of funds appropriated or otherwise made available by the Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The Buy American provisions under the ARRA drew criticism from various US trading partners, including Canada. According to USTR, US and Canadian officials have been working together since 2009 to resolve the matter because “the trade and investment relationship between the United States and Canada is very important to both of our countries.”

According to USTR, the US-Canada agreement has two major elements:

- The agreement will provide Canada and the United States with permanent market access at the sub-federal level under the World Trade Organization (WTO) Government Procurement Agreement (GPA); and
- The agreement provides for additional, reciprocal guarantees of access on a temporary basis under the following terms:
  - Canada has agreed to provide US suppliers with access through September 2011 to a range of construction contracts in a number of Canadian provincial and municipal entities not otherwise covered by the GPA; and
  - The United States has agreed to provide Canadian suppliers with access to 37 states already covered by the GPA and access for Canadian suppliers to a limited number of programs funded by the ARRA.

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The joint statement notes that US-Canada agreement is “tentative” and is still subject to completion of the respective domestic approval processes, requiring review by domestic stakeholders in both countries before it can be signed.

USTR Kirk noted that the Obama Administration has “made clear to Canada from the outset that any agreement to provide Canada with expanded access to US procurement absolutely must provide guaranteed reciprocal access for US exporters to supply goods and services to Canada through provincial and territorial procurement contracts [and] USTR has won that access for American firms.” Minister Van Loan noted that the agreement “further strengthens the Canada-US relationship to the benefit of Canadian workers and businesses.”

### **Commerce, Treasury Secretaries Unveil Some Details, Little Substance of Administration’s New Export Promotion Initiatives**

On February 4, 2010, Secretary of Commerce Gary Locke delivered an address in which he outlined the Obama Administration’s new export promotion initiatives. The speech comes on the heels of President Obama’s State of the Union address where he stated that the United States would shift its focus to export promotion, and shortly after the President’s fiscal year 2011 budget request that included additional funds for new export promotion activities.

In his address, Secretary Locke touched upon the new “National Export Initiative” (NEI), a program that President Obama first introduced in his State of the Union address “which aims to double American exports over the next five years and support two million jobs.” According to Secretary Locke, the United States “stands out among developed nations as one of the few whose government does not have a focused, comprehensive and agile export strategy.” He noted that the NEI will provide more funding for export promotion and more coordination between government agencies in addition to ensuring “that commercial advocacy objectives get government-wide support and that we do a more effective job of advocating for US products in our interactions with foreign businesses, farmers and foreign officials.”

Secretary Locke also announced the creation of an Export Promotion Cabinet comprised of officials from the Departments of Commerce, Treasury, State, Agriculture, the Export-Import Bank, the Office of the United States Trade Representative (USTR) and the Small Business Administration. Secretary Locke noted that within 180 days, all of the agencies in the Export Cabinet will be responsible for submitting a coordinated, detailed plan to President Obama about how “they will collectively enhance United States exports.”

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Other export promotion initiatives that Secretary Locke announced include:

- “expanding trade advocacy in all its forms” by “educating US companies about opportunities overseas, directly connecting them with new customers, and advocating more forcefully for their interests;”
- improving access to credit for small- and medium-sized businesses that want to export;
- “rigorous enforcement” of international trade laws, combating foreign trading partners’ tariff and non-tariff barriers, and “cracking down on practices that blatantly harm US companies, like the theft of our intellectual property;”
- Identifying new markets for existing US exporters;
- Increasing the number of foreign buyers to US trade shows;
- Working with private sector partners to increase exporting through the Department of Commerce’s market development cooperator grant program;
- Enabling more clean energy companies to become involved in new markets; and
- Launching a virtual CommerceConnect website that will serve as a portal for businesses to access the Department of Commerce and other federal government services.

Separately, at a February 3, 2010 House Ways and Means Committee hearing, Secretary of Treasury Timothy Geithner also alluded to the Administration’s new focus on export promotion and remarked on the three pending Free Trade Agreements (FTAs) with Colombia, Panama and Korea, stating that the agreements are “absolutely” part of President Obama’s plan to double US exports. He noted that the Administration and Congress will need to work together to pass “strong” trade agreements. He also noted that the Administration is committed to a successful conclusion of the World Trade Organization (WTO) Doha Round, because it will “benefit US businesses and is also a key component of the [export] strategy.”

The focus on US exports and new export promotion initiatives are the closest that Administration officials have announced with regards to a US trade policy under the Obama Administration, and Secretaries Locke and Geithner have unveiled some further details as to how President Obama intends to increase US exports. Nonetheless, for some observers, the new focus on export promotion is not an equal substitute for a comprehensive US trade policy that includes the negotiation of bilateral and multilateral trade deals that decrease trade barriers and increase market access – both abroad for US companies and in the United States for US trading partners. And although Secretary Geithner linked passage of the pending FTAs to the export strategy, he only made his comments after being prodded by Ways and

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Means Committee Members" questions on the agreements; he, like other Administration officials, has still not provided any other details on how the Administration intends to address these FTAs or when. Other observers noted that Secretary Locke's speech made inconclusive connections between export promotion and job creation, and opined that he did not provide enough specifics and details on the Administration's export activities, apart from the "180 days" deadline that government agencies must work under in crafting their own export promotion plans. Others noted that Secretary Locke did not allude to the US economy's role as an important importer of foreign components that it then consumes or uses to manufacture US goods, adding that many US goods are unlikely to be exported without the use of imported components and products. Consequently, the Administration's outward focus on US exports will likely do little for US trade policy and is unlikely to do much for the pending FTAs or the stalled Doha Round. Instead, the new focus on US exports is likely to overshadow what some trade observers consider to be the more "traditional elements" of a comprehensive US trade policy.

## Free Trade Agreements

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### *Free Trade Agreements Highlights*

#### **Rep. Mack Introduces Resolution Calling on Quick Passage of FTAs**

On February 26, 2010, Rep. Connie Mack (R-FL) introduced a resolution that calls on the Administration and Congress to pass the three pending Free Trade Agreement (FTAs) with Colombia, Panama and Korea (“Supporting President Obama and his agenda to strengthen United States trade relations in Asia and with key partners like South Korea, Panama, and Colombia” H. Res. 1124). The resolution has been referred to the House Committee on Ways and Means.

The resolution states that the House of Representatives “strongly supports President Obama and his agenda to strengthen United States trade relations in Asia and with key partners like South Korea, Panama, and Colombia; remains concerned that the United States risks losing markets in Colombia, Panama, and South Korea to its competitors due to its inaction as these and other countries continue to move forward with their respective free trade agreements; and calls on President Obama to submit to Congress the trade agreements the United States has signed with Colombia, Panama, and South Korea and work to ensure that they secure passage as quickly as possible.”

There will likely be little movement on the resolution, given the political climate in Congress, the upcoming mid-term election season and the lack of priority that Congress and the Administration have assigned to US trade policy. In addition, H. Res. 1124 is a “simple resolution” defined as a “matter concerning the operation of either the House of Representatives or Senate . . . not presented to the President for action.” Observers note that this essentially means that the resolution is more of a “statement” as opposed to an actual piece of legislation that will require a Congressional vote and action by the President. The resolution could spark some dialogue and debate on the fate of the pending FTAs, but observers do not expect much movement on the pending agreements to come out of H. Res. 1124.

## Multilateral

### Multilateral Highlights

#### WTO Appellate Body Releases 2009 Annual Report

On February 17, 2010, the World Trade Organization (WTO) Appellate Body (AB) released its “Annual Report for 2009” in which it provides a summary of the activities undertaken in 2009 by the AB and its Secretariat. We highlight several sections of the report below:

- General Overview.** The report notes that “2009 was a year of milestones for the WTO’s dispute settlement system [which] saw the initiation of the 400th dispute since the WTO dispute settlement system was established in 1995.” The report also notes that the AB circulated its 100th Report at the end of 2009. The report concludes that “the WTO dispute settlement system plays a key role in providing security and predictability and is a key feature of the WTO as a rule-based system.”
- Appeals.** The report notes that “2009 was not as intense as previous years” and that only three appeals were filed in 2009. The three appeals filed in 2009 are included in the table below:

Panel reports appealed	Date of appeal	Appellant	Document number	Other appellant	Document number
<i>US – Zeroing (EC) (Article 21.5 – EC)</i>	13 Feb 2009	European Communities	WT/DS294/28	United States	WT/DS294/29
<i>US – Zeroing (Japan) (Article 21.5 – Japan)</i>	20 May 2009	United States	WT/DS322/32	---	---
<i>China – Publications and Audiovisual Products</i>	22 Sept 2009	China	WT/DS363/10	United States	WT/DS363/11

Source: WTO AB “Annual Report for 2009”

- AB Reports.** The report notes that four AB reports were circulated during 2009. The AB reports circulated in 2009 are included in the table below:

Case Title	Document number	Date circulated	Date adopted by the DSB	WTO agreements covered
<i>US – Continued Zeroing</i>	WT/DS350/AB/R	4 February 2009	19 February 2009	Anti-Dumping Agreement GATT 1994 DSU
<i>US – Zeroing (EC) (Article 21.5 – EC)</i>	WT/DS294/AB/RW and Co rr.1	14 May 2009	11 June 2009	Anti-Dumping Agreement GATT 1994 DSU

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Case Title	Document number	Date circulated	Date adopted by the DSB	WTO agreements covered
<i>US – Zeroing (Japan) (Article 21.5 – Japan)</i>	WT/DS322/AB/RW	18 August 2009	31 August 2009	Anti-Dumping Agreement GATT 1994 DSU
<i>China – Publications and Audiovisual Products</i>	WT/DS363/AB/R	21 December 2009	19 January 2010	GATS GATT 1994 China's Accession Protocol and Working Party Report

Source: WTO AB “Annual Report for 2009”

- **AB Members.** The report states that in 2009, two Members of the AB – Luiz Olavo Baptista and Giorgio Sacerdoti – departed after their second terms of office expired in December 2009 (although Baptista resigned a few months earlier for health reasons). The report notes that Ricardo Ramírez-Hernández and Peter Van den Bossche were appointed to the AB to replace the outgoing Members.
- **2010 Outlook.** The report states that “the year ahead is likely to be more challenging [because] several panels are expected to circulate their reports by mid-year [and] some of these cases involve very complex issues.” In addition, the report states that “the appeal activity is likely to be intense in the upcoming years.”

## EU Requests WTO for Authorization to Impose Sanctions on US Over “Zeroing”

According to several reports, on February 2, 2010, the EU circulated a notification to World Trade Organization (WTO) Members in which it requested permission from the WTO to levy tariffs against the United States in retaliation for the US Department of Commerce’s (DOC) use of the “zeroing” methodology to calculate antidumping duties on EU products. According to the EU request, the United States has failed to bring its antidumping duty calculation method “in line with its treaty obligations and with prior WTO rulings.” Specifically, the EU is asking the WTO for permission to levy either prohibitive 100 percent tariffs on USD 311 million worth of trade or ad valorem 13.18 percent tariffs on USD 477 million worth of trade. According to the EU, the tariffs “are equal to or less than the damage US zeroing causes the EU.”

In May 2009, the WTO Appellate Body (AB) upheld an earlier dispute panel finding that the United States failed to comply with a 2006 WTO ruling that ruled on DOC’s use of zeroing in more than two dozen antidumping investigations and administrative reviews targeting EU imports (DS294); the EU won the

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right to impose sanctions against the United States. According to several reports, the EU is also preparing to challenge the United States' compliance with a second dispute regarding the DOC's use of zeroing in dumping cases involving imports of European ball bearings, anti-friction bearings, steel products, pasta, and chemicals (DS350); in that challenge, EU officials argue that the United States failed to meet a December 2009 deadline to implement a WTO decision ruling against DOC's use of zeroing in those particular dumping cases.

A spokesperson for the Office of the United States Trade Representative (USTR) stated that US officials regretted that the EU chose to "escalate the dispute," adding that "it is particularly regrettable that the EU has chosen to take this step so soon after the United States worked closely with the EU in accommodating a resolution of the longstanding bananas dispute." According to USTR, the United States is "actively conducting consultations with all interested parties regarding what action or actions should be taken to comply with the various zeroing findings, including in the EU zeroing dispute." The spokesperson also noted that the United States has the right to file an objection to the EU's tariff request, which would then lead to arbitration. Under WTO rules, arbitration on the amount of sanctions would normally have to be completed within 60 days.

To date, there have been more than a dozen disputes regarding the DOC's zeroing methodology. US trading partners – such as the EU, Brazil, Canada, Ecuador, India, Japan, Mexico, Thailand, and South Korea – continue to take the United States to the WTO Dispute Settlement Body in order to address zeroing. Observers note, however, that various panels and the WTO AB have consistently found that DOC's zeroing does not comply with US WTO obligations.