



March 2010

Japan External Trade Organization
WTO and Regional Trade Agreements
Monthly Report

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Summary of Reports

United States

USTR Releases 2010 Trade Policy Agenda

On March 1, 2010, the Office of the United States Trade Representative (USTR) released the “2010 Trade Policy Agenda and 2009 Annual Report of the President of the United States on the Trade Agreements Program.” On March 3, 2010, the Senate Finance Committee held a hearing on the 2010 agenda where USTR Ron Kirk provided his views on the report and the Administration’s trade stance. We review below the Administration’s 2010 trade agenda and the Senate Finance Committee hearing.

President Obama Details Further Information on NEI, Signs Executive Order on Export Initiatives

On March 11, 2010, President Obama unveiled further details of his National Export Initiative (NEI), a program that he 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.” In addition to presenting more information on the NEI, President Obama also signed an Executive Order that, among other things, established the Export Promotion Cabinet. We review below the additional details of the NEI.

US and India Sign “Framework for Cooperation on Trade and Investment”

On March 17, 2010, United States Trade Representative (USTR) Ron Kirk and Indian Minister of Commerce and Industry Anand Sharma signed the “Framework for Cooperation on Trade and Investment” (“Framework”). The main objective of the Framework is to institute trade-enhancing policies and an environment conducive to fostering trade and investment between the two countries. The first important step under the Framework is the launch of an initiative known as “Integrating US and Indian Small Businesses into the Global Supply Chain” which aims at increasing trade and job-creating avenues for the two countries.

Legislators Explore China’s Currency, Introduce Currency Exchange Rate Oversight Reform Act of 2010

On March 17, 2010, Sen. Charles Schumer (D-NY) introduced the Currency Exchange Rate Oversight Reform Act of 2010, a bill “to provide for identification of misaligned currency [and] require action to

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correct the misalignment” (S. 3134). Separately, on March 24, 2010, the House Ways and Means Committee held a hearing on China’s exchange rate policy and its impact on the US and global economies. We review below the proposed legislation and the Ways and Means hearing on China’s currency.

United States Highlights

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

- USTR Releases 2010 NTE Report on Foreign Trade Barriers, Report on Sanitary and Phytosanitary Measures and Report on Technical Barriers to Trade
- President Obama Announces Several Trade-Related “Recess Appointments”
- OMB Issues Amendments to Interim Final Guidance on “Buy American” in ARRA
- EPA Proposes Greenhouse Gas Reporting for Additional Sources
- USTR Announces New Chief of Staff
- US and China Reach Agreement on Pork
- Senate Finance Committee Holds Preference Program Hearing; Senators Pledge Reform Bill by June 2010
- New House Ways and Means Trade Subcommittee Chair Named
- US and Russia Reach Agreement on US Pork Product Imports in Russian Market
- Sen. Specter Introduces Bill Allowing Petitioners to Seek Injury Finding from District Courts, Not Just from ITC
- Brazil and the United States Seek To Assuage Bilateral Irritants
- Senators Urge Extension of “Buy American” to Renewable Energy Projects
- House Ways and Means Committee Chairman Announces “Leave of Absence” in Light of Ethics Committee Admonishment

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Free Trade Agreements

Free Trade Agreements Highlights

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

- TPP FTA Negotiators Conclude First Round of Talks
- USTR Discusses TPP FTA Negotiations with House Trade Working Group
- Rep. Taylor Introduces Bill to Withdraw US from NAFTA

Customs

Customs Highlights

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

- ITC Seeks Public Comment on Proposed Changes to US Harmonized Tariff Schedule

Multilateral

CAMEX Publishes Brazil's Final Retaliation List in Cotton Dispute with United States

On March 8, 2010, the Brazilian Foreign Trade Chamber (CAMEX) published in the Official Gazette **Resolution n. 15**, which provides for a list of 102 products that could potentially face higher import tariffs when imported into Brazil from the United States. This measure is consistent with the World Trade Organization (WTO) Dispute Settlement Body (DSB) ruling that authorized Brazil to impose retaliatory measures against the United States in the amount of USD 829 million per year for its failure to comply with the WTO rulings in the *US – Subsidies on Upland Cotton* (DS267) dispute. On March 8, 2010, Brazil notified the WTO regarding the publication of the list.

Multilateral Highlights

- WTO Appellate Body Releases 2009 Annual Report
- US Requests WTO Dispute Settlement Panel on Philippines' Taxes on Distilled Spirits
- United States Notes Increase in Antidumping, Countervailing Duty Investigations in Report to WTO

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- CAMEX Requests Public Comments on Brazil's IPR Retaliation List in Cotton Dispute with United States
- WTO Report Highlights Decrease in Trade Restrictive Measures by G-20 Members

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

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Reports in Detail

United States

USTR Releases 2010 Trade Policy Agenda

Summary

On March 1, 2010, the Office of the United States Trade Representative (USTR) released the “2010 Trade Policy Agenda and 2009 Annual Report of the President of the United States on the Trade Agreements Program.” On March 3, 2010, the Senate Finance Committee held a hearing on the 2010 agenda where USTR Ron Kirk provided his views on the report and the Administration’s trade stance. We review below the Administration’s 2010 trade agenda and the Senate Finance Committee hearing.

Analysis

I. Background

On March 1, 2010, USTR unveiled the “2010 Trade Policy Agenda and 2000 Annual Report of the President of the United States on the Trade Agreements Program.” The report discusses the Obama Administration’s trade “priorities” for 2010 and presents an overview of 2009 trade activities and USTR initiatives.¹ According to the report, the President’s 2010 trade agenda will focus on US exports, with the goal of doubling US exports in the next five years. The report notes that the recently-announced National Export Initiative (NEI) will play a significant role in achieving this goal. The report also reiterates the Administration’s “commitment to the rules-based global trading system” and notes that the Administration will continue to “fight for market access abroad and responding to unfair foreign competition through new dispute proceedings at the World Trade Organization [WTO] or action through other venues.”

II. Trade Agenda Items

The trade items that the Obama Administration will focus on in 2010 include:

¹ The full report is available at: <http://www.ustr.gov/2010-trade-policy-agenda>.

A. Trade Enforcement.

The Administration is committed to “strengthening the trade system . . . through better enforcement of existing rights and through new rules negotiated to respond to changing economic conditions.” According to the Administration, US trade rights include protection of intellectual property, the ability to address market access barriers to US goods and services, and recourse to trade remedies when necessary. In 2010, the Administration will also report and act on new measures instituted in 2009 to address trade barriers that affect US agricultural producers and manufacturers, such as sanitary and phytosanitary (SPS) measures restricting US agricultural exports and technical barriers to trade (TBT).

B. Free Trade Agreements (FTAs)

Regarding the Administration’s negotiation of the Trans-Pacific Partnership (TPP) FTA with Australia, Brunei, Chile, New Zealand, Peru, Singapore, and Vietnam, the report notes that the Administration “will develop its negotiating objectives for the TPP Agreement consistent with its pledge to engage fully with diverse stakeholders in America,” adding that the Administration plans to participate in the first two negotiating sessions of the TPP in the first half of 2010, “even as the consultative process progresses.” The report does not offer any other details on the TPP FTA negotiations or the position that the United States will take during the talks. Regarding the pending FTAs with Panama, Colombia and Korea, the report states that “proper resolution and implementation of [these agreements] can bring significant economic and strategic benefits.” The Administration, however, believes that problems still exist among these trading partners, including labor and tax transparency issues in Panama, violence against labor unions and issues with labor rights in Colombia, and “outstanding issues” as related to automobiles and beef in Korea. The report notes that the Administration will work with Congress on a timeframe to submit the pending FTAs for Congressional consideration although the report does not provide a clear timeframe for submission of the agreements. On the North American Free Trade Agreement (NAFTA), the report notes that the Administration will “examine how to recalibrate the NAFTA” and explore “how best to make improvements in labor practices and policies, and environmental practices and policies.”

C. WTO Doha Round

The Administration supports a “successful Doha Round [that] will embrace a process of balanced and ambitious give and take among established or newly emerging trading powers, while giving due consideration to the special interests and circumstances of developing economies, including major achievements in regard to their development agenda.” However, the report does not provide further details as to how the United States will proceed in the stalled multilateral negotiations, noting that the “the

question is how to move forward” and stating that advanced developing economies must accept increased responsibility in the Doha Round. The Administration states that in order to achieve further progress, “it is essential to gain more clarity in the level of market access contributions by advanced developing countries, and ensure that the results provide significant market opportunities for American entrepreneurs and workers in agriculture, goods, and services.”

D. Other Multilateral Channels

In 2010, the Administration will continue work with US trading partners in the Asia Pacific Economic Cooperation (APEC) forum “to build consensus and advance work on critical trade and investment issues leading up to 2011 when the United States will host APEC.” In addition, the United States will continue working with the Association of Southeast Asian Nations (ASEAN) to build economic relationships in Southeast Asia.

E. Trade Preference Programs

Regarding US preference programs such as the Generalized System of Preferences (GSP) and the African Growth and Opportunity Act (AGOA), the Administration will continue to work with Congress and other stakeholders to “implement and improve these programs, and to better focus benefits on the poorest countries.”

F. Trade Relations with BRIC Countries

The report notes that the United States will continue to interact with China on US-China trade issues through various fora, including the US-China Joint Commission on Commerce and Trade (JCCT) and the Strategic and Economic Dialogue (S&ED). The report notes that contentious issues with China include China’s intellectual property protection, Chinese industry standards, and Chinese government procurement practices. On India, the report notes that the Administration will continue to work with India on a commercial space launch agreement and a Bilateral Investment Treaty (BIT). On Brazil, the Administration “will explore options for the creation of a more robust formal framework for trade dialogue between the United States and Brazil.” On Russia, the United States will “continue to work with Russia to ensure that trade and investment priorities keep pace with other important aspects of our bilateral relationship.”

G. Intellectual Property Rights (IPR)

The report notes that the Administration has expanded the Special 301 process that “pinpoints key challenges for US intellectual property-based businesses affected by piracy, counterfeiting, and other forms of IPR theft.”

H. Labor and Environmental Monitoring

The Administration will also continue the “vigorous scrutiny of foreign labor practices” it began in 2009 and will “redress practices that impinge upon labor obligations in our trade agreements, deny foreign workers their internationally recognized rights, and tilt the playing field away from American workers.” Enforcement initiatives include enhanced monitoring by USTR and other agencies of labor practices in FTA partner countries, ensuring review of all public submissions under FTA labor chapters, engaging other governments to address areas of concern through dialogue and technical cooperation programs as appropriate, invoking FTA consultation and arbitral panel provisions as needed, and including the issue labor rights as part of US trade discussions. In addition, the Administration will continue to monitor FTA partners' implementation of, and compliance with, environment chapter obligations.

I. Investment

The report notes that the Administration began a review of the “Model Bilateral Investment Treaty” in 2009, and is working to conclude the BIT review expeditiously, “so that the United States can resume BIT negotiations with carefully chosen countries, including with key emerging economies, such as China, India, Vietnam, and Mauritius.”

J. Energy and Environment

The report notes that the Administration will back trade initiatives that will lower the cost and enhance the efficacy of US energy and environmental strategies, such as supporting “fast-tracking action with willing partners in the WTO’s work on liberalizing trade in innovative, climate-friendly goods and services through tariff reductions that will stimulate their global markets.” The Administration will also promote investment in clean energy technologies. Regarding climate change policies, the report states that “a smart and comprehensive approach to climate change will respect our international trade obligations and help US industries gain a competitive edge in the new clean energy economy.”

III. Senate Finance Committee Hearing on 2010 Trade Policy Agenda

On March 3, 2010, the Senate Finance Committee held a hearing on the 2010 agenda where USTR Ron Kirk provided his views on the report and the Administration’s trade stance. In his opening remarks,

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Senate Finance Committee Chairman Max Baucus (D-MT) proposed five steps that would help to open markets and promote US exports: (i) increase support for US export promotion; (ii) approve the pending free trade agreements with Colombia, Panama and Korea; (iii) strengthen US relations in the Asia-Pacific and “insist on an ambitious Doha Round agreement that creates new opportunities for agriculture, manufacturing, and services” given that “the deal on the table is inadequate;” (iv) enforce existing US trade agreements; and (v) ensure that US trading partners “do not gain unfair advantage by failing to adopt or enforce basic labor rights and environmental protections.”

In his opening remarks, Senate Finance Committee Ranking Member Charles Grassley (R-IA) criticized the 2010 Trade Policy Agenda for “gaps in the level of detail provided by the President.” He noted that the 2010 trade agenda states that the United States “will continue to engage with the Governments of Panama, Colombia, and Korea” as the Administration further refines its analysis of outstanding issues “but it does not indicate where we are on that engagement, or when future meetings are planned with the governments of Colombia and South Korea to iron out resolutions to the Administration’s concerns.” He opined that delay in implementation of the pending FTAs “hurts US credibility around the world, not just economically, but geopolitically as well” and “creates some confusion with respect to the Administration’s own trade initiatives.” Sen. Grassley also noted that the 2010 trade agenda reiterates the President’s goal of doubling US exports in the next five years, “and touts the President’s National Export Initiative as a means of achieving that” but that “the details for achieving that growth in exports are missing [and] the relevant executive departments and agencies have been given six months to submit detailed plans to the President on how they will spend monies that have already been accounted for in the President’s budget to achieve an increase in US exports.”

USTR Kirk noted that the 2010 Trade Policy Agenda “outlines this Administration’s commitment to the rules - based trading system, our dedication to enforcing America’s rights, and our plan to advance U.S. economic interests by negotiating new market - opening agreements and resolving issues with pending free trade agreements” noting that “these elements will stimulate export - driven growth and help the United States meet the President’s goal to double US exports.” On the pending FTAs, USTR Kirk stated that “approval of these FTAs is a priority [and the Administration is] working to resolve the outstanding issues so that we can move forward on trade agreements with South Korea, Panama and Colombia.” Specifically, USTR Kirk stated that the Administration would finalize a list of requirements for the Colombian government within the next several months in terms of promoting worker rights and reducing violence against labor officials in that country. Regarding the stalled Doha Round, USTR Kirk noted that “USTR aims to expand rules - based trade opportunities for American businesses and workers, and for

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some of the world's poorest nations by achieving an ambitious and balanced conclusion to the Doha Round of trade negotiations." On preference programs, USTR Kirk stated that "the Administration is also working with Congress and other stakeholders to implement and improve trade preference programs that help developing nations to gain a foothold in the international marketplace."

Outlook

Trade observers who were hoping for a clearly outlined US trade policy in the 2010 Trade Policy Agenda may find the report lacking in details and specifics on the Administration's views and approach to trade. Similar to the February 2010 White House Council of Economic Advisers' "Economic Report of the President Together With the Annual Report of the Council of Economic Advisors," the 2010 agenda offered little insight and detail on the Administration's trade stance. In fact, much of the language in the report appeared similar to the 2009 Trade Policy Agenda in terms of general descriptions and vague policy outlines.

On FTAs, the Administration provided no clear indication on the fate of the pending FTAs with Panama, Colombia and Korea, providing general descriptions of the "contentious issues" that must be resolved within each agreement before the Administration can submit the FTAs to Congress. When compared to the 2009 Trade Policy Agenda, the 2010 Trade Policy Agenda shows just how little the Administration has moved on the agreements. In 2009, the Administration noted that it was in the process of developing a plan of action to address the pending trade agreements in consultation with Congress, and even indicated its hope to move on the pending US-Panama FTA "relatively quickly" and its intent to establish benchmarks for progress on the Korea and Colombia agreements. To date, the Administration has not provided any signal that it intends to move on the Panama agreement in the short-term, and it has not established the benchmarks it promised in its 2009 report, although USTR Kirk's statement on the Colombia FTA and how the Administration would like to establish those benchmarks over the next several months was more of a substantive statement. The announcement of the TPP FTA – which, since the 2009 Trade Policy Agenda, has been solidified to an actual trade policy agenda item – may provide some observers with a positive sign that the Administration will proactively engage in at least one FTA negotiation, although the 2010 Trade Policy Agenda provides no clear indication on how the Administration will approach the negotiations and the timeframe under which it plans to work on the TPP FTA.

On the stalled Doha Round, similar to the 2009 report, the 2010 Trade Policy Agenda continues to express the Administration's support for the United States' commitment to the multilateral negotiations, and similar to last year's report, the 2010 report still does not provide details on the US negotiating stance

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and how willing it is to revise its offers in order to inject some momentum to the round. In fact, the 2010 Trade Policy Agenda calls on advanced developing economies (likely India and Brazil) to improve their own Doha offers in order to move the negotiations forward.

On other US trade issues, including preference program reform, the negotiation of BITs, and IPR monitoring, the report provides broad outlines of the approaches the Administration intends to take on each of these policy areas, noting some new initiatives (such as the expanded Special 301 process and the new SPS and TBT reports that USTR will issue). Nonetheless, the agenda does not list any further details on these issues and does not provide any frameworks or timelines under which the Administration will work on these issues.

What was new in the 2010 report was the inclusion of more language on trade enforcement and monitoring. As noted, in 2010, the Administration will report and act on SPS measures restricting US agricultural exports and TBTs. These new reports coupled with the Special 301, Section 1377 and National Trade Estimate of Foreign Trade Barriers reports indicate that the Administration will be keeping a close eye on its trading partners' compliance with trade agreements and rules, at the bilateral and multilateral level. In addition, the Administration appears to be monitoring trading partners' compliance with labor and environmental provisions included in trade agreements. This is not a new theme; at the onset of the Obama Administration, officials noted that trade enforcement and monitoring would be important elements in the Administration's trade policy, and it now appears that the Administration is making a concerted effort to stand by that promise.

The Administration's focus on exports (and doubling them over the next five years) is also a new addition to the Trade Policy Agenda. The inclusion of the NEI and the export-led initiatives that the Administration plans to institute were not present in the 2009 report, and it appears that much of the Administration's trade policy in 2010 will focus on doubling US exports. Among other things, the new focus on exports includes the creation of an Export Promotion Cabinet comprised of officials from different government agencies, "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." 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. These observers opine that 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.

Thus, the 2010 Trade Policy Agenda appears very similar to the 2009 report, even with the inclusion of more language on enforcement and with the new shift in focus to exports. USTR Kirk’s testimony at the March 3 Senate Finance Committee hearing did little to “fill in the gaps” and lack of detail that Sen. Grassley and other observers have opined is present in the 2010 Trade Policy Agenda. Consequently, similar to last year, US trade will likely continue to be a “back-burner” issue for the Administration in 2010, if not beyond.

President Obama Details Further Information on NEI, Signs Executive Order on Export Initiatives

Summary

On March 11, 2010, President Obama unveiled further details of his National Export Initiative (NEI), a program that he 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.” In addition to presenting more information on the NEI, President Obama also signed an Executive Order that, among other things, established the Export Promotion Cabinet. We review below the additional details of the NEI.

Analysis

On March 11, 2010, President Obama unveiled further details of the NEI, a program that he 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.” In addition to presenting more information on the NEI, President Obama also signed an Executive Order that, among other things, established the Export Promotion Cabinet.

I. NEI

According to the Executive Order, the NEI is an “Administration initiative to improve conditions that directly affect the private sector’s ability to export [and] will help meet my Administration’s goal of doubling exports over the next five years by working to remove trade barriers abroad, by helping firms - especially small businesses - overcome the hurdles to entering new export markets, by assisting with financing, and in general by pursuing a Government-wide approach to export advocacy abroad.”

Among other things, the NEI will consist of:

- Programs designed by the Export Promotion Cabinet meant to enhance export assistance to small- and medium-sized enterprises (SMEs), including programs that improve information and other technical assistance to first-time exporters and assist current exporters in identifying new export opportunities in international markets;
- Further promotion of Federal resources currently available to assist exports by US companies;
- Government-led trade missions meant to promote exports by US companies;
- Further steps to ensure that the Federal Government's commercial advocacy effectively promotes exports by US companies;
- Increased availability of credit to SMEs;
- Further steps to improve market access overseas for US manufacturers, farmers, and service providers by "actively opening new markets, reducing significant trade barriers, and robustly enforcing our trade agreements; and
- A framework for promoting services trade, including the necessary policy and export promotion tools.

President Obama also re-launched the President's Export Council, a national advisory committee on international trade. He appointed President and CEO of Boeing Co. Jim McNerney and the CEO of Xerox Ursula Burns as chairs to the advisory committee and stated that he looked forward to the committee's recommendations.

II. Other Export Promotion Activities

In addition to the main elements of the NEI, Administration officials have also outlined other export promotion activities that the Administration will oversee. At a February 3, 2010 House Ways and Means Committee hearing, Secretary of Treasury Timothy Geithner 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."

On February 4, 2010, Secretary of Commerce Gary Locke delivered an address in which he outlined several of the Obama Administration's new export promotion initiatives. In his address, Secretary Locke touched upon the NEI. Other export promotion initiatives that Secretary Locke announced include:

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- “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;”
- 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.

III. Export Promotion Cabinet

The March 11, 2010 Executive Order established an Export Promotion Cabinet to develop and coordinate the implementation of the NEI. The Export Promotion Cabinet will meet periodically and report to the President on the progress of the NEI. The Export Promotion Cabinet may also establish subgroups consisting of its members or their designees, and, as appropriate, representatives of other departments and agencies. The Export Promotion Cabinet will coordinate with the Trade Promotion Coordinating Committee (TPCC). Members of the Export Promotion Cabinet will provide to the President, no later than 180 days after the date of the Executive Order, “a comprehensive plan to carry out the goals of the NEI” and the Chairman of the TPCC will set forth the steps taken to implement this plan in the annual report to the Senate Committee on Banking, Housing, and Urban Affairs of the Senate and the House Committee on Foreign Affairs.

The Export Promotion Cabinet is made up of:

- the Secretary of State;
- the Secretary of the Treasury;
- the Secretary of Agriculture;
- the Secretary of Commerce;
- the Secretary of Labor;
- the Director of the Office of Management and Budget;
- the United States Trade Representative (USTR);

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- the Assistant to the President for Economic Policy;
- the National Security Advisor;
- the Chair of the Council of Economic Advisers;
- the President of the Export-Import Bank of the United States;
- the Administrator of the Small Business Administration;
- the President of the Overseas Private Investment Corporation;
- the Director of the United States Trade and Development Agency; and
- the heads of other executive branch departments, agencies, and offices as the President may, from time to time, designate.

Outlook

Although President Obama has revealed further information on the NEI, 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. Others point out that the NEI does not appear to address the US economy's role as an important importer of foreign components that it then consumes or uses to manufacture US goods, and note that many US goods are unlikely to be exported without the use of imported components and products. They also note that "doubling US exports in five years" may be too ambitious a goal and that the Administration's intense focus on this goal may replace other trade-related initiatives, including passage of the pending FTAs and a conclusion to the stalled Doha Round.

On the pending FTAs, the Administration has still not provided any further details on how it intends to address them, when it will do so, or even if it will do so. The Administration's focus appears to be on export promotion, and what little political capital it appears to be willing to devote to FTAs has been shifted to the Trans-Pacific Partnership (TPP) FTA negotiations. The fate of the pending FTAs remains unknown, much to the consternation of many US businesses and trade associations and groups. Consequently, the Administration's outward focus on US exports will likely do little 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.

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US and India Sign “Framework for Cooperation on Trade and Investment”

Summary

On March 17, 2010, United States Trade Representative (USTR) Ron Kirk and Indian Minister of Commerce and Industry Anand Sharma signed the “Framework for Cooperation on Trade and Investment” (“Framework”). The main objective of the Framework is to institute trade-enhancing policies and an environment conducive to fostering trade and investment between the two countries. The first important step under the Framework is the launch of an initiative known as “Integrating US and Indian Small Businesses into the Global Supply Chain” which aims at increasing trade and job-creating avenues for the two countries.

Analysis

On March 17, 2010, USTR Kirk and Minister Sharma signed the Framework. The intention for signing such a Framework was first announced during a meeting of the Trade Policy Forum (TPF) held on October 26, 2009 in New Delhi.

A meeting of the Private Sector Advisory Group (PSAG) to the Trade Policy Forum was also held on the sidelines of the signing of the Framework. The members of the PSAG have offered to work as implementing partners for initiatives undertaken by the TPF including the aforementioned small businesses initiative.

The Framework primarily aims at instituting trade enhancing policies and an environment conducive to fostering trade and investment between the two countries. Goals under the Framework include developing and enforcing policies that:

- encourage technological innovation;
- aim at increasing trade in agriculture, services, and industrial goods, as well as investment flows;
- aim at enhancing protection of intellectual property rights;
- develop India’s infrastructure; and
- enable cooperation on clean energy and environmental sciences, information and communications technologies (ICT) among other important sectors.

USTR Kirk noted the “almost limitless potential for growth in trade” between the two countries and that can contribute to economic recovery and job creation in the United States and continued economic growth in India.

The first important step under the Framework is the launch of an initiative known as “Integrating US and Indian Small Businesses into the Global Supply Chain.” This initiative aims at increasing trade and job-creating avenues for both US and Indian companies, and will support President Obama’s National Export Initiative (NEI) and Prime Minister Manmohan Singh’s recently announced Budget undertakings. The initiative is also expected to advance the economic relationship between the United States and India through public-private cooperation and a concentrated focus on large company and Small and Medium Enterprises (SME) cooperation.

In addition, the initiatives set forth below have been discussed as possible strategies for achieving the objectives of the Framework:

- increasing opportunities for private sector partnerships in infrastructure projects;
- enhancing Intellectual Property Rights (IPR) awareness and enforcement;
- promoting bilateral cooperation in healthcare, education, information technology, energy and environmental services industries;
- working to empower women and disadvantaged groups;
- creating a greater mutual understanding of respective approaches to government procurement; and
- SME development.

The Framework also lays down an outline for discussing barriers to trade in agriculture, services and manufactured goods as well as how bilateral flows can be enhanced and how greater IPR protection can be promoted.

Outlook

President Obama is scheduled to visit India later in 2010. In anticipation of the President’s visit, Minister Sharma called upon the US and Indian private sectors to establish partnerships and initiate new ventures that will demonstrate the mutually beneficial nature of the US-India commercial relationship. The United States is India’s largest trading partner and one of the main sources of Foreign Direct Investment into India. US-India bilateral trade has more than doubled in the last five years.

Legislators Explore China's Currency, Introduce Currency Exchange Rate Oversight Reform Act of 2010

Summary

On March 17, 2010, Sen. Charles Schumer (D-NY) introduced the Currency Exchange Rate Oversight Reform Act of 2010, a bill "to provide for identification of misaligned currency [and] require action to correct the misalignment" (S. 3134). Separately, on March 24, 2010, the House Ways and Means Committee held a hearing on China's exchange rate policy and its impact on the US and global economies. We review below the proposed legislation and the Ways and Means hearing on China's currency.

Analysis

I. Senators Introduce Currency Exchange Rate Oversight Reform Act of 2010

On March 17, 2010, Sen. Charles Schumer (D-NY) introduced the Currency Exchange Rate Oversight Reform Act of 2010, a bill "to provide for identification of misaligned currency [and] require action to correct the misalignment" (S. 3134). The bill has 16 co-sponsors and was last referred to the Senate Finance Committee.

The bill includes several currency-related provisions, including:

- **Reports to Congress.** The bill states that no later than March 15 and September 15 of each calendar year, the Secretary of Treasury, after consulting with the Chairman of the Board of Governors of the Federal Reserve System and the Advisory Committee on International Exchange Rate Policy, must submit to Congress a written report on international monetary policy and currency exchange rates containing, among other things:
 - An analysis of currency market developments and the relationship between the US dollar and the currencies of major economies and trading partners of the United States;
 - A review of the economic and monetary policies of major economies and trading partners of the United States, and an evaluation of how such policies impact currency exchange rates;
 - A description of any currency intervention by the United States or other major economies or trading partners of the United States, or other actions undertaken to adjust the actual exchange rate relative to the United States dollar;

- An evaluation of the domestic and global factors that underlie the conditions in the currency markets, such as monetary and financial conditions, accumulation of foreign assets, and macroeconomic trends, among other things;
 - A list of currencies designated as fundamentally misaligned currencies and a description of any economic models or methodologies used to establish the list; and
 - A list of currencies designated for priority action.
- **Currency Misalignment Designation.** As noted, the bill mandates the Secretary of Treasury to determine on a semi-annual basis whether any foreign currency is in fundamental misalignment and to designate such currency as a “fundamentally misaligned currency.” The Department of Treasury would have to base its determination strictly on objective measures related to currency exchange rates. The Secretary of Treasury must also identify any currency as a “currency for priority action” if a currency is “(i) engaging in protracted large-scale intervention in the currency exchange market, particularly if accompanied by partial or full sterilization; (ii) engaging in excessive and prolonged official or quasi-official accumulation of foreign exchange reserves and other foreign assets, for balance of payments purposes; (iii) introducing or substantially modifying for balance of payments purposes a restriction on, or incentive for, the inflow or outflow of capital, that is inconsistent with the goal of achieving full currency convertibility; or (iv) pursuing any other policy or action that, in the view of the Secretary, warrants designation for priority action.”
 - **Bilateral Negotiations and Consultations.** Upon designation of a currency as “fundamentally misaligned,” the Secretary of Treasury would have to consult bilaterally with the country that issues such currency in order to facilitate the adoption of appropriate policies to address the fundamental misalignment. For currencies designated for priority action, the Secretary of Treasury will, in addition to consultations with the country, seek the advice of the International Monetary Fund (IMF) with respect to the Secretary’s findings in the report submitted to Congress, and encourage other governments to join the United States in seeking the adoption of appropriate policies by the country to eliminate the fundamental misalignment.
 - **US Action on Failure to “Adopt Appropriate Policies.”** The bill states that no later than 90 days after the date on which a currency is designated for priority action, the Secretary of Treasury must determine whether the country that issues such currency has adopted appropriate policies, and taken identifiable action, to eliminate the fundamental misalignment. If the Secretary determines that the country that issues such currency has failed to adopt appropriate policies, or take identifiable action,

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to eliminate the fundamental misalignment, the following will apply with respect to the country until the Secretary of Treasury determines otherwise:

- **Adjustments under Antidumping Law.** The bill would adjust US antidumping law and states that “the administering authority shall ensure a fair comparison between the export price and the normal value by adjusting the price used to establish export price or constructed export price to reflect the fundamental misalignment of the currency of the exporting country.”
- **Federal Procurement.** Under the bill, the President would prohibit the procurement by the Federal Government of products or services from the identified country, although the prohibition will not apply with respect to a country that is a party to the World Trade Organization (WTO) Agreement on Government Procurement.
- **IMF Action.** The bill states that the United States will inform the Managing Director of the IMF of the failure of the country to adopt appropriate policies, or to take identifiable action, to eliminate the fundamental misalignment, and will request that the IMF consult with such country regarding the observance of the country’s obligations under Article IV of the International Monetary Fund Articles of Agreement, including through special consultations, if necessary, and formally report the results of the consultations to the Executive Board of the IMF within 180 days of the date of request.
- **OPIC Financing.** Under the bill, the Overseas Private Investment Corporation (OPIC) would not approve any new financing (including insurance, reinsurance, or guarantee) with respect to a project located within the country.
- **Multilateral Bank Financing.** Under the bill, the Secretary of Treasury would instruct the United States Executive Director at each multilateral bank to oppose the approval of any new financing (including loans, other credits, insurance, reinsurance, or guarantee) to the government of the country or for a project located within the country that is fundamentally misaligning its currency.
- **US Action on Persistent Failure to Adopt Appropriate Policies.** No later than 360 days after the date on which a currency is designated for priority action, the Secretary of Treasury must determine whether the country that issues such currency has adopted appropriate policies, and taken identifiable action, to eliminate the fundamental misalignment. If the Secretary determines that the country that issues such currency has failed to adopt appropriate policies, or take identifiable action, to eliminate the fundamental misalignment, in addition to the actions described above, the following would apply with respect to the country until the Secretary of Treasury decides otherwise:

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- **WTO Action.** The United States Trade Representative (USTR) will request consultations in WTO with the country regarding the consistency of the country's actions with its obligations under the WTO Agreement.
- **Remedial Intervention.** The Secretary will consult with the Board of Governors of the Federal Reserve System to consider undertaking remedial intervention in international currency markets in response to the fundamental misalignment of the currency designated for priority action, and coordinating such intervention with other monetary authorities and the IMF.
- **Presidential Waiver.** The President may waive any action provided for under this bill if the President determines that taking such action would cause serious harm to the national security of the United States, or it is in the vital economic interest of the United States to do so, and that taking such action would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action.
- **Currency Undervaluation under Countervailing Duty Law.** The bill would amend section 702 of the Tariff Act of 1930 (19 U.S.C. 1671a(c)) and would mandate the Department of Commerce (DOC) to initiate a countervailing duty investigation of currency "undervaluation" or "fundamental misalignment" where: (i) a petition is filed by an "interested party" alleging the elements necessary to impose CVDs under US law, and (ii) the petition is accompanied by sufficient information reasonably available to petitioner. The bill does not, however, require that the petition be filed "by or on behalf of the domestic industry."

Upon introducing the bill, **Sen. Schumer** noted that Congress must act on the bill because China continues to deny that it is manipulating currency, opining that more Senators will back S. 3134 this year than the 67 Senators that supported a version of the currency bill in 2005. **Sen. Sherrod Brown (D-OH)** echoed Sen. Schumer's views, adding that the Administration will not meet its goal of doubling US exports in five years "as long as China is gaining an unfair trade advantage by manipulating its currency." **Senate Finance Committee Chairman Max Baucus (D-MT)** stated that "China's economic and trade policies have an enormous impact on American companies that compete with — and in — China" and he noted that he intends to work closely with the Obama Administration and other Members of Congress to "ensure we keep China accountable and keep American businesses competitive." **Acting House Ways and Means Committee Chairman Sander Levin (D-MI)**, meanwhile, stated that he thinks China is a currency manipulator, opining that the United States must "internationalize the addressing of the imbalance in currencies."

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II. House Ways and Means Committee Hearing on China's Currency

On March 24, 2010, the House Ways and Means Committee held a hearing on China's exchange rate policy and its impact on the US and global economies. In opening the hearing, **Ways and Means Committee Chairman Levin** stated that "what seems undisputed on this much disputed issue is that China has a persistent economic strategy, a policy, key to which is the pegging of its currency to the dollar at an undervalued rate." He opined that "since the mid 1990s, China has clearly pursued an export-led growth strategy focused on addressing its needs – namely, creating jobs and accumulating vast foreign reserves [and] central to this export-led growth strategy is China's policy of keeping its currency substantially undervalued [which] keeps China's exports cheap in the US market, and makes imports into China substantially more expensive."

Ways and Means Ranking Member Dave Camp (R-MI) opined that "China's deliberate and dangerous wealth transfer from everyday households to inefficient export-platform factories is standing in the way of the domestic consumption that the Chinese (and the rest of the world) believe the Chinese (and the rest of the world) so desperately need." He stated, however, that focusing on the currency valuation issue to the exclusion of other issues could "lead to collective frustration than to any improvement in the health of the critical US-Chinese economic relationship." He encouraged the Obama Administration to address China's currency policy in high-level bilateral summits, like the Strategic and Economic Dialogue (S&ED), as well as restart Bilateral Investment Treaty (BIT) negotiations with China and "devote time and resources toward attempting to establish a robust, multilateral process—either in the G20, IMF, or elsewhere—so that other countries, particularly some of China's neighbors in Asia, can bring new points of pressure to bear."

Director of the Peterson Institute for International Economics C. Fred Bergsten recommended that the Administration adopt "a new three-part strategy to promote early and substantial appreciation of the exchange rate of the RMB" that includes: (i) labeling China as a "currency manipulator" in the April 15 foreign exchange report to the Congress; (ii) seeking a decision by the IMF to launch a "special" or "ad hoc" consultation to pursue Chinese agreement to remedy the situation promptly; and (iii) requesting a WTO dispute settlement panel to determine whether China has violated its obligations under Article XV of the WTO charter and to recommend remedial action that other Member countries could take in response.

Resident Scholar at The American Enterprise Institute Philip Levy presented a series of unilateral and multilateral options for US policy on China's currency, noting that "when the United States acts alone, it is most likely to trigger a negative political response from the Chinese government." Unilateral policy options included a currency manipulation label for China, "treat[ing] China's currency undervaluation as a

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countervailable subsidy,” requesting a WTO dispute against China under WTO Article XV, and implementing a unilateral across-the-board tariff. Multilateral approaches included a currency agreement with China under the WTO,” firmer action” by the IMF, and an agreement on principles by multilateral groups. Levy opined that “none of the multilateral approaches offer a quick or easy course of action [but they] offer the possibility of a carefully-developed set of rules for international financial behavior that could govern the international economy for years to come [and] by avoiding the antagonisms of bilateral conflict, a multilateral approach could make it politically easier for China to accede to the new rules.”

President of the Economic Strategy Institute Clyde Prestowitz opined that “in answer to the question of whether or not China is manipulating its currency, the answer is, of course, that it is doing so by intervening constantly in currency markets to maintain the nominal value of the RMB at a fixed rate to the dollar.” He added, however, that many East Asian countries are managing their currencies to facilitate their export competitiveness into the US market. He opined that “rather than making this a bilateral issue, it is clearly preferable that some multilaterally negotiated arrangement be achieved, perhaps in the G20 or in the WTO or even in the IMF.” He noted that another option is negotiating with China in a multilateral context on the currency issue.

Outlook

The China currency debate is a long-standing and contentious issue that legislators have turned to repeatedly over the past several years, especially during election years. There does not appear to be any agreement among legislators on the best approach the United States should take with regards to the China currency issue. The Ways and Means hearing demonstrated this lack of consensus on policy options, with invited panelists generally agreeing that China is manipulating its currency to keep its export prices low but disagreeing on any next steps that the United States should follow to pressure China to address US currency concerns. All of the hearing’s witnesses appeared to oppose a unilateral imposition of punitive tariffs on Chinese goods (something that S. 3134 proposes), and there appeared to be a general view that a multilateral approach may be the best policy option for the United States.

For Sen. Schumer and others, however, the unilateral approach appears to be the policy option that they are advocating. According to some observers, the move to introduce the currency bill is purely a political one that is not based on history, economics or current global market realities. For example, Dan Ikenson from The Cato Institute notes that “between July 2005 and July 2008, the Chinese RMB appreciated by 21 percent against the dollar,” adding that “over that three-year period, the US trade deficit with China increased from USD 202 to USD 268 billion [and] only one-third to one-half of US imports from China is Chinese value added [while] the rest is Japanese, Taiwanese, Korean, Australian, American and other

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countries' value added." He opines that "despite the evidence of a weak relationship between currency values and trade flows, Congress has been pushing the Commerce Department—and is now considering legislation—to treat currency manipulation as a subsidy to be remedied under the US Countervailing Duty law," questioning how the Department of Commerce would justify its subsidy measurement methodology." Other observers note that 2010 is an election year and that legislators may be addressing China's currency because they feel that it will reverberate with voters, regardless of whether their views on the currency issue are backed by strong data and evidence.

The Department of Treasury is scheduled to release its semi-annual report on currency manipulation on April 15, 2010, and at this stage, it is uncertain whether Treasury will label China a currency manipulator in its report. Within the past several reports, the Treasury Department has refused to label China as a currency manipulator, consequently adding fuel to Sen. Schumer and other legislators' argument that the Administration is refusing to act on the matter and that Congress must instead introduce legislation that will address China's currency. If Treasury does not label China a currency manipulator in its April report, Sen. Schumer and other legislators will likely intensify their push for passage of S. 3134 and will likely work harder to obtain support from other House and Senate Members. Indeed, Sen. Schumer has stated that he will move the legislation forward even if the Treasury Department cites China as a currency manipulator in its semi-annual report.

Whether such a push will trigger movement on the bill is another matter; to date, legislators have been too focused on other issues – such as health care and financial regulatory reform – to consider trade-related bills. As noted, the bill has 16 co-sponsors, and according to public sources, no other legislators have signed onto the legislation as a co-sponsor since its introduction. Nonetheless, recent bilateral tensions between the United States and China – such as Google Inc.'s accusation of Chinese corporate espionage, proposed US arms sales to Taiwan, and President Obama's scheduled meeting with the Dalai Lama in addition to the currency issue – could attract the attention of some Members of Congress and could shift their focus to the China currency question and the fate of S. 3134.

Aside from the politics of the bill and whether it will move through Congress are questions that some observers have posed on the WTO consistency of the bill. Some observers opine that the legislation could raise WTO concerns regarding the mandatory initiation by DOC of an investigation to determine whether a nation's currency policies are providing a countervailable subsidy. As noted, the legislation's CVD provisions would mandate DOC to initiate a CVD investigation of currency "undervaluation" or "fundamental misalignment" where: (i) a petition is filed by an "interested party" alleging the elements necessary to impose CVDs under US law, and (ii) the petition is accompanied by sufficient information

reasonably available to petitioner. The bill does not, however require that the petition be filed “by or on behalf of the domestic industry.” Some observers note that Article 11.4 of the WTO Subsidies and Countervailing Measures (SCM) Agreement requires an examination of “industry support” where a CVD investigation is initiated by petition; consequently, they opine that if enacted, the legislation could violate Article 11.4 of the SCM Agreement. In addition, unlike other currency bills, the legislation does not address: (i) whether currency policy is a “financial contribution by the government” (and thus a “subsidy”); or (ii) whether any such subsidy is specific under US Law. These points are also contentious issues that any WTO dispute (raised in the context of the legislation) would likely have to address.

United States Highlights

USTR Releases 2010 NTE Report on Foreign Trade Barriers, Report on Sanitary and Phytosanitary Measures and Report on Technical Barriers to Trade

On March 31, 2010, the United States Trade Representative (USTR) published its 2010 National Trade Estimate (NTE) Report on Foreign Trade Barriers in addition to two new reports on sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBTs).

I. 2010 NTE Report on Foreign Trade Barriers

The annual NTE report, as required by the Omnibus Trade and Competitiveness Act of 1988, is an inventory of the most significant foreign barriers to: (i) US exports of goods and services; (ii) foreign direct investment by US persons; and (iii) protection of intellectual property rights (IPR). The report provides, where feasible, quantitative estimates of the foreign practices’ impact on the value of US exports. The 2010 NTE report classifies foreign trade barriers into the following categories:

- Import policies;
- Standards, testing, labeling, and certification;
- Government procurement;
- Export subsidies;
- Lack of intellectual property protection;
- Services barriers;

- Investment barriers;
- Anticompetitive practices with trade effects tolerated by foreign governments;
- Trade restrictions affecting electronic commerce; and
- Other barriers.

The report examines “the largest export markets for the United States, including: 58 nations, the European Union, Taiwan, Hong Kong, and one regional body.”

II. 2010 Report on SPS Measures

The 2010 Report on SPS Measures is a new, specialized report “dedicated to describing significant barriers to US food and farm exports arising from measures that foreign governments apply on the ground that are necessary to protect human, animal, or plant life or health from risks arising from the entry or spread of pests, from plant- or animal-borne pests or diseases, or from additives, contaminants, toxins, or disease-causing organisms in foods, beverages, or feedstuffs.” The report is focused on SPS measures that appear to be unscientific, unduly burdensome, discriminatory, or otherwise unwarranted and create significant barriers to US exports. The report includes a discussion of SPS issues that affect US exports in multiple foreign markets, and identifies and describes “significant unwarranted SPS-related trade barriers currently facing US exporters, along with US Government initiatives to eliminate or reduce the impact of these barriers.”

The report identifies SPS measures in the following countries and groups of countries: Argentina, Australia, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, the EU, Guatemala, the Gulf Cooperation Council (GCC), Honduras, Hong Kong, India, Israel, Jamaica, Japan, Kazakhstan, Kenya, Kuwait, Mexico, Morocco, New Zealand, Nicaragua, Norway, Peru, Philippines, Russia, Saudi Arabia, Singapore, South Africa, the South African Development Community, South Korea, Sri Lanka, Switzerland, Taiwan, Thailand, Turkey, Ukraine, United Arab Emirates, Uruguay, Venezuela, and Vietnam.

III. 2010 Report on TBTs

The 2010 Report on TBTs is also a new, specialized report “focused on significant foreign trade barriers in the form of product standards, technical regulations and testing, certification, and other procedures involved in determining whether products conform to standards and technical regulations (conformity assessment procedures).” The report is intended to describe and advance US efforts to identify and eliminate TBTs, and also identifies and describes significant standards-related trade barriers currently

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facing US producers, along with US government initiatives to eliminate or reduce the impact of these barriers.

The report identifies TBT measures in 20 countries or groups of countries: Argentina, Brazil, Canada, China, Colombia, Ecuador, the EU and its Member States, the GCC and its Member States, India, Indonesia, Israel, Japan, Korea, Malaysia, Mexico, Russia, Taiwan, Thailand, Turkey, and Vietnam.

President Obama Announces Several Trade-Related “Recess Appointments”

On March 27, 2010, President Obama announced several trade-related “recess appointments” for pending nominees. Specifically, the President made 15 recess appointments, noting that some nominees have been on “hold” by several Senators over particular issues for nearly six months. The recess appointees can serve until the end of the year, or until they are finally approved by the Senate. The Senate is in recess until April 12, 2010.

Included in the 15 recess appointments were:

- Michael Punke as Deputy United States Trade Representative (DUSTR) and the US Permanent Representative to the World Trade Organization (WTO) in Geneva;
- Islam Siddiqui as Chief US Agricultural Negotiator
- Eric Hirschhorn as Department of Commerce Undersecretary for Export Administration;
- Francisco Sanchez as Department of Commerce Undersecretary for International Trade; and
- Alan Bersin as US Customs and Border Protection (CBP) Commissioner.

Punke and Siddiqui’s nominations had been on hold in Congress due to a dispute between Sen. Jim Bunning (R-KY) and the Obama Administration over US burley tobacco. Sen. Bunning had placed holds on the two nominees 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.” The Senator’s state, Kentucky, is the largest producer of burley tobacco in the United States. Sen. Bunning has stated that he has “tried to get Ambassador Kirk to move to WTO with a complaint [but] he’s refused to do that . . . so I told him I was going to hold all his nominees for the trade group that might come to my attention.”

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

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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). The Senate Finance Committee approved his nomination in December.

OMB Issues Amendments to Interim Final Guidance on “Buy American” in ARRA

In a March 25, 2010 Federal Register (FR) notice, the Office of Management and Budget’ Office of Federal Financial Management (OFFM) announced amendments to interim final guidance on certain “Buy American” provisions as included in the American Recovery and Reinvestment Act of 2009 (P.L. 111–5; ARRA) (75 FR 14323). The amendments reflect changes with respect to US international obligations since the publication of the interim final guidance in April 2009. The effective date of the amendments is **March 25, 2010**.

Specifically, the FR noted that the OFFM is amending four areas of the interim final guidance, as included below:

- The US-Canada Agreement on Government Procurement was added to the list of international agreements in section 176.90(b);
- Taiwan was added as a party to the World Trade Organization (WTO) Government Procurement Agreement (GPA);
- The threshold that applies to international agreements was raised from USD 7,430,000 to USD 7,804,000, based on a determination made by the United States Trade Representative (USTR); and
- A technical correction was made.

EPA Proposes Greenhouse Gas Reporting for Additional Sources

On March 22, 2010, the Environmental Protection Agency (EPA) proposed rules that would require oil and gas wells, carbon sequestration facilities, and facilities that produce and use fluorinated gases, such as chlorofluorocarbons (CFCs), to report greenhouse gas emissions (GHGs). This proposal would amend the Mandatory Reporting of GHGs Rule that the EPA promulgated on October 30, 2009 (74 FR 56260) by adding reporting requirements for this source category. In the EPA’s October 2009 reporting rule for GHG emissions, only sources that emit more than 25,000 metric tons of carbon dioxide-equivalent

greenhouse gases were covered under the rule and had to begin measuring emissions on January 1, 2010, with first reports due by March 31, 2011.

Specifically, the new proposed rule would require emissions reporting from the following industry segments: onshore petroleum and natural gas production, offshore petroleum and natural gas production, natural gas processing, natural gas transmission compressor stations, underground natural gas storage, liquefied natural gas (LNG) storage, LNG import and export terminals, and distribution. The proposed supplemental rulemaking does not require control of GHGs but requires that the listed sources above certain threshold levels monitor and report GHG emissions.

- **Oil and Natural Gas Wells.** The new proposed rule would require oil and natural gas wells and associated equipment that emit more than the equivalent of 25,000 metric tons per year of carbon dioxide to report emissions. The rule would also apply to offshore oil and gas wells and storage tanks and equipment to transfer the oil and gas onshore as well as natural gas distribution systems that are regulated as public utilities or municipally owned. The proposal would require the largest emissions sources to conduct direct measurement of emissions; other sources would use engineering estimates, emission modeling software, and emission factors, as appropriate, to calculate emissions. Facilities would be required to begin collecting data on January 1, 2011 and would have to submit reports to EPA annually, with the first report due by March 31, 2012, for 2011 emissions.
- **Carbon Dioxide Injection.** The proposed rule would also apply to carbon dioxide sequestration and underground injection for enhanced oil and gas recovery. Sources would be required to report the amount of carbon dioxide received, the amount injected, and the source of the carbon dioxide, if known. Sources, except for enhanced oil and gas recovery sites, would be required to develop and implement an EPA-approved site-specific monitoring, reporting, and verification (MRV) plan. Sources would have to submit the first annual reports to the EPA by March 31, 2012, for injection that occurred in 2011.
- **Fluorinated Gas Emissions.** The proposed rule would also require reporting of fluorinated gas emissions from sources engaged in electronics production, fluorinated gas production, imports and exports of pre-charged equipment or closed-cell foams containing fluorinated greenhouse gases, and the use and manufacture of electric transmission and distribution equipment. In addition to CFCs, the proposal would apply to production of hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF₆), nitrogen trifluoride (NF₃), hydrofluoroethers (HFEs), and other fluorinated gases.

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The EPA is requesting that interested parties submit their comments on the proposed rules 60 days after publication of the proposed rule in the Federal Register. In addition, a public hearing on this proposal will be held on April 19, 2010. Additional information on the proposal is available at <http://www.epa.gov/climatechange/emissions/subpart/w.html>.

USTR Announces New Chief of Staff

The Office of the United States Trade Representative (USTR) has announced that Lisa Garcia, formerly the Assistant USTR for Intergovernmental Affairs and Public Engagement, has agreed to serve as the new Chief of Staff at USTR. Prior to joining USTR, Garcia was Principal of her own strategic and political consulting firm in Austin, Texas and served in the office of Senator John Kerry (D-MA) as well as on the Kerry-Edwards 2004 campaign. She also worked for Texas elected officials and several Texas political campaigns and initiatives on issues such as national and state Legislative oversight, national initiatives, corporate governmental and public affairs.

US and China Reach Agreement on Pork

On March 18, 2010, US officials announced that the United States and China have reached an agreement to reopen the Chinese market to US pork and pork products. In 2009, China banned US imports of pork and pork products over concerns over the H1N1 virus. United States Trade Representative (USTR) Ron Kirk and Secretary of Agriculture Tom Vilsack announced the agreement, noting that US pork trade with China will resume immediately once officials in both countries finalize export documentation. Specifically, the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China has accepted a resumption of US pork exports to China following meetings between Chinese and US officials in early March in Beijing.

Senate Finance Committee Holds Preference Program Hearing; Senators Pledge Reform Bill by June 2010

On March 9, 2010, the Senate Finance Committee held a hearing on US preference program reform. At the hearing, **Senate Finance Committee Chairman Max Baucus (D-MT)** and **Ranking Member Charles Grassley (R-IA)** outlined some of their proposed reforms to the programs, and noted that they are planning to introduce a bill by the end of June 2010 to reform the programs. The Generalized System of Preferences (GSP), the Andean Trade Preferences Act (ATPA), and the Caribbean Basin Trade

Partnership Act (CBTPA) will expire this year unless Congress extends the programs; the CBTPA will expire on September 30, 2010 and the GSP and ATPA programs will expire on December 31, 2010.

Sen. Grassley stated that he would like to reform US preference programs through several means, including:

- establishing graduation criteria for products and countries;
- establishing clearer eligibility requirements for program participation that are regularly reviewed;
- expanding the number of countries participating in the programs;
- removing trade preferences for advanced developing countries to establish greater reciprocity at an appropriate point of development;
- implementing firmer provisions for when developing countries can “graduate” out of a program;
- simplifying rules of origin and product coverage “that promote new trade flows to maximize the potential for economic development, particularly among least-developed countries;” and
- distributing trade capacity building funds in a more rational and efficient manner.

Sen. Grassley noted that if the eventual reform bill includes these elements, he will support a longer-term reauthorization of the programs.

Chairman Baucus echoed Sen. Grassley’s views and added that the United States “must streamline operational provisions, such as rules of origin, to eliminate the current patchwork of rules that are hard to implement and harder to enforce,” as well as include provisions in preference programs that encourage strong labor standards.

Sen. Ron Wyden (D-OR) indicated his support for stronger provisions in the programs to link trade preference benefits with human rights issues. **Director of the Project on Trade and Global Markets at the Democratic Leadership Council Edward Gresser** testified that simpler preference programs with wider benefits “could do more for both the preferences’ core mission of development and poverty alleviation and for American policy goals,” and he advocated on behalf of extending textile and apparel trade preferences to Cambodia and Bangladesh. **Economic policy analyst for the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) Jeffrey Vogt** testified that preference programs need stronger protections for workers in beneficiary countries and stated that the language of the programs should refer to “core labor rights” rather than “internationally recognized worker rights,” and that the programs require recipients to make progress toward adopting core labor rights laws

within three to five years of entering the program in order to remain eligible. **Vice President for Policy at the Leon H. Sullivan Foundation Gregory Simpkins** testified that eliminating preferences for African nations and transferring those benefits to other countries, including Asian countries, could be “disastrous for Africa.”

Whether legislators will reform preference programs in 2010 remains a question, especially in light of similar promises made over the past several years that simply resulted in annual extensions of expiring preference programs and further pledges to reform the programs in the following year. Nonetheless, Sens. Baucus and Grassley have noted that they would like to introduce a preference program reform bill by June 2010, a timeframe that serves as more of a concrete pledge than in years past. Although it is too early to tell what might appear in such a bill, it would appear that Sen. Grassley will push for the inclusion of the suggested reforms that he outlined at the hearing, which could include establishing clearer eligibility requirements for program participation that are regularly reviewed, removing trade preferences for advanced developing countries, and including firmer provisions for when developing countries can “graduate” out of a program. Sen. Grassley has, in the past, criticized the participation of advanced developing countries such as Brazil in the programs, and should his suggested provisions in the bill go through, then Brazil and other advanced developing countries will have to consider the possibility that they will be graduated from the programs if Congress passes the bill. Nonetheless, the Administration has not yet indicated its position on preference program reform and with Congress’ focus on other domestic issues (that threaten to lengthen the Congressional work agenda) and with the summer recess and November election season coming up, the preference programs reform bill might fall by the wayside if the Senators are unable to introduce it before other issues overshadow their proposals.

New House Ways and Means Trade Subcommittee Chair Named

Rep. John Tanner (D-TN) will be the new Chairman of the House Ways and Means Trade Subcommittee. New House Ways and Means Committee Chairman Sander Levin (D-MI) made the announcement on March 9, 2010, and noted that Rep. Tanner was the second most senior member of the Trade Subcommittee behind Rep. Levin, who became Ways and Means Committee Chairman following Rep. Charles Rangel's (D-NY) announcement that he will take a leave of absence as Chairman of the Ways and Means Committee in light of a recent admonishment from the House Committee on Standards of Official Conduct for certain violations regarding improper travel reimbursements.

According to The Cato Institute, Rep. Tanner’s record on trade is mixed. He has voted in favor of US Free Trade Agreements (FTAs) with Morocco, Bahrain, Oman, Peru, Australia, Singapore, and Chile, and

he voted in favor of the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA). He has also voted in favor of Trade Promotion Authority (TPA). He did, however, support the ban on Mexican trucks on US roads and has voted in favor of US sugar subsidies and support.

US and Russia Reach Agreement on US Pork Product Imports in Russian Market

On March 5, 2010, US and Russian officials announced that they had reached an agreement that would reopen Russia's market to US pork products and that would institute new inspection requirements for all American pork export facilities to address Russian concerns about possible contamination. US Secretary of Agriculture Tom Vilsack announced that the United States and Russia agreed that Russia would lift restrictions on shipments from 13 US pork plants whose pork products had been banned by Russia since December 2009 when Russia notified the US Department of Agriculture that it would limit the amount of US pork and pork product imports from the United States because it had found banned antibiotics in some of the pork shipments.

Under the agreement, US pork plants wanting to export their products to Russia will be required to apply through a new export verification (EV) program specifically addressing Russian product requirements and run by the Food Safety and Inspection Service (FSIS) and the Agricultural Marketing Service (AMS). Specifically, the requirements entail new microbiological and tetracycline-group antibiotic residue limits, and companies wanting to export pork to Russia will be required to meet the requirements set out by the EV program and the US Department of Agriculture Quality System Assessment Program, after which they will be eligible to receive FSIS export certification. Once the AMS grants a facility approval, the facility will be placed on a list of approved US pork plants with Russian officials.

Reaction to the agreement was positive. National Pork Producers Council President Don Butler stated that although "the new safety requirements were unnecessary, US pork producers were ready to comply with the new EV program, in order to get back into the Russian market."

Sen. Specter Introduces Bill Allowing Petitioners to Seek Injury Finding from District Courts, Not Just from ITC

On March 4, 2010, Sen Arlen Specter (D-PA) introduced the Unfair Foreign Competition Act of 2010 (S. 3080). Sens. Bob Casey (D-PA) and Sherrod Brown (D-OH) are co-sponsors on the bill, and the bill was last referred to the Senate Finance Committee.

Under the bill, US manufacturers “harmed by dumping or illegal subsidization” would have the ability to bring a civil action in a US district court for an injury finding instead of relying on the current International Trade Commission (ITC) determination. Specifically, the bill would allow petitioning parties in an antidumping or subsidy investigation (or five-year sunset review) to elect to bring a civil action in a US district court for an injury determination (which would be in lieu of an ITC determination). Petitioners would have to bring the civil action in a court in a judicial district where a manufacturing facility, sales office, or headquarters is located. The district court would apply the same standards in determining an injury, and an order issued by the district court would be appealable to a US Court of Appeals.

According to Sen. Specter, “giving petitioners the option of choosing between the ITC and their local US district court for the injury determination would let domestic producers serve as private plaintiffs in seeking enforcement of trade remedy laws if they so choose.” Sen. Specter also noted that he was introducing the measure “because current administrative remedies have not been consistently and effectively enforced [and] I am introducing private right of action legislation to enforce the law.”

Observers note that Sen. Specter introduced the measure because he feels that the ITC has not been “tough enough” with enforcement. Some observers, however, question whether affording petitioners the right bring a civil action to district courts would ensure that these district courts will be any tougher on enforcement than the ITC, although other observers note that “local favoritism” (petitioners would have to bring up such an action in a court in a judicial district where a manufacturing facility, sales office, or headquarters is located) could help achieve a positive result for the domestic industry. At this stage, it is unclear if the bill will move forward; as noted, the bill was last referred to the Senate Finance Committee, and the Committee has not indicated if and when it will consider the proposed legislation. Observers note that Sen. Specter introduced similar legislation in 1999 and 2007, and that neither of those two bills moved past the Committee stage or progressed far through Congress. In addition, some observers note that although there has been no response from the Administration on the bill, some members of the Administration may not support opening a potential floodgate of new trade remedy petitions at the district court-level.

Brazil and the United States Seek To Assuage Bilateral Irritants

On March 3, 2010, United States Secretary of State, Hillary Clinton visited Brazil and held meetings with Brazilian President Luiz Inácio Lula da Silva and Foreign Affairs Minister Celso Amorim. Clinton’s trip to Brazil was part of a week-long tour to South and Central America (which included other Mercosur countries, such as Uruguay and Argentina). Although Clinton’s visit was of political nature, Clinton and

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Amorim also had the opportunity to discuss important items in the US-Brazil trade and economic agenda, such as the ongoing bilateral dispute over US cotton subsidies at the World Trade Organization (WTO).

In a joint press release issued after the meeting, Brazil and the United States announced the establishment of a “Global Partnership Dialogue” (GPD) between the two countries. Bilateral meetings of the GPD will take place annually and will seek to foster discussions on the bilateral, regional and global agendas. Clinton and Amorim also stressed the importance of economic cooperation, trade and investment flows for creating jobs and increasing competitiveness. They highlighted the ongoing discussions between the Brazilian Ministry of Foreign Affairs and the United States Trade Representative (USTR) to develop a framework to increase trade and economic cooperation and the positive results obtained under the existing Economic Partnership Dialogue, the Bilateral Consultative Mechanism and the Brazil-US CEO Forum. Amorim and Clinton signed a Memorandum of Understanding (MoU) to strengthen cooperation on: (i) climate change and clean energy; (ii) the advancement of women issues; and (iii) technical cooperation in third countries.

On the WTO Doha Round negotiations, Amorim and Clinton reiterated their commitment to seek an ambitious and balanced conclusion of the WTO Doha Round negotiations but they did not provide a deadline for reaching an agreement. On the Brazil-US WTO cotton dispute (*US – Upland Cotton, DS267*), Clinton announced that US high-level officials will travel to Brazil next week to negotiate compensations for Brazilian cotton producers harmed by the US subsidies ruled inconsistent with WTO rules by the WTO Dispute Settlement Body (DSB). Amorim welcomed the US willingness to negotiate an amicable settlement to the dispute but confirmed that Brazil is ready to publish on March 8, 2010 the list of products that will face punitive tariffs in retaliation for the US non-compliance with the WTO DSB ruling. After the publication of the list, Brazil will have 30 days to start implementing the retaliatory measures. According to Amorim, the 30-day period will allow the parties to negotiate an acceptable amount in compensation for Brazilian cotton producers to avoid retaliation. Clinton stated that she hoped for a “happier ending” to the cotton dispute in the next month before the punitive tariffs enter into force.

Clinton’s trip to Brazil evidences the US keen interest to build a closer partnership with the South American giant and assuage bilateral tensions over the ongoing trade dispute over US cotton subsidies and other contentious issues, such as Iran sanctions. For the first time, the United States appears willing to negotiate an amicable settlement with Brazil to prevent potential harm to US exporters that would face punitive tariffs if Brazil moves ahead with retaliation measures. The United States is also trying to get Brazil’s support on a number of other global issues, including the Doha Round negotiations and United Nations (UN) Iran sanctions. Brazil, however, who now sits as a non-permanent member at the UN

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Security Council, will not back-up new sanctions on Iran over its nuclear program and will not settle for anything less than a balanced and ambitious agreement to the Doha Round. Analysts opine that the United States will continue to court Brazil and engage the South American country in light of its increased leverage and leadership role in multilateral fora.

Senators Urge Extension of “Buy American” to Renewable Energy Projects

In a March 2, 2010 letter to Secretary of the Treasury Timothy Geithner, Senators Charles Schumer (D-NY), Bob Casey (D-PA), Sherrod Brown (D-OH) and Jon Tester (D-MT) urged the Treasury Department to prevent a renewable energy program included in the 2009 American Recovery and Reinvestment Act (ARRA or “Recovery Act”) “from supporting foreign wind turbine manufacturing.” The Senators also recommend that if Treasury “chooses not to exercise its discretion” regarding the distribution of grants under the grant program to wind farm developers, then it should defer grant distribution until legislation that the Senators have introduced on the issue clears Congress.

The issue at stake is the Department of Treasury and Department of Energy’s “Section 1603” grant program to wind farm developers (included in the ARRA). Under Section 1603 of the ARRA, owners of facilities that are eligible for the Investment Tax Credit (ITC) provided under the ARRA may elect instead to receive a cash grant from the Department of Energy equal to the amount of the ITC when the facility enters service. The grants are available for facilities placed in service in 2009 or 2010, or for facilities which begin construction in 2009 or 2010 and are completed within four to eight years, depending on the type of facility. Eligible properties include large and small wind facilities, closed-loop biomass, open-loop biomass, geothermal, landfill gas, hydropower, marine and hydrokinetic, microturbines, solar, fuel cells, and combined heat and power. According to reports and estimations, for most properties, the grant will equal 30 percent of the cost basis.

In their letter, the Senators note that a February 8, 2010 report by the Investigative Reporting Workshop “highlights the distressing fact that Recovery Act funds are being used to finance wind and other clean-energy projects that source major components and create manufacturing jobs overseas.” According to the Senators, the report shows that 73 percent of the USD 1.9 billion in Section 1603 wind energy grants distributed by the US government since September 1, 2009, have gone to foreign-owned companies, and that the majority of turbines purchased with that money have been built by foreign manufacturers. The Senators opine that “this is not the intended use of Recovery Act funds.”

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On March 3, 2010, the Senators introduced the “American Renewable Energy Jobs Act” (the bill does not have a bill number attached to it as of yet). The bill amends the ARRA “to ensure that stimulus funds are distributed only to clean-energy projects that preserve and create jobs in the United States.” The legislation also would make Section 1603 grants subject to “Buy American” provisions, and would extend “Buy American” provisions in the ARRA to all renewable energy projects that seek stimulus money, including the private projects that are making use of the new grants.

Department of Energy officials, meanwhile, counter that the Section 1603 program funds US power generation projects that employ US workers even if some of the energy components are made by foreign companies and built overseas. A Department of Energy spokesperson noted that the Section 1603 program “has doubled the pace of investment in America’s wind industry [and] every dollar awarded through the 1603 program helps put Americans to work, and the funding only goes to projects built in the United States.” The American Wind Energy Association also criticized the Investigative Reporting Workshop’s report on the Section 1603 program, opining that the report was misleading and stating that the grant program supports US power generation projects.

Sen. Schumer has opined that his proposed legislation on the Section 1603 program would get “broad bipartisan support.” Nonetheless, at this stage, it is too early to tell if the proposed bill will gain any traction in Congress. Senators may be too focused on other issues to tackle the proposed bill, and given the criticism that the United States received after passage of the ARRA and the “Buy American” provisions within, some legislators and Administration officials may find the proposed legislation too controversial to support. The Senators have used a dual-track approach to the Section 1603 issue, introducing their legislation and calling on Treasury to halt grant distribution under the program; consequently, if Treasury acts on the Senators’ recommendations, then their bill may not see any forward movement. It is unlikely, however, that Treasury will act on the Senators’ recommendations, in light of the Department of Energy’s criticism of the Senators’ letter and proposed bill (Treasury runs the Section 1603 program along with the Department of Energy). Nonetheless, 2010 is an election year and the Senators that introduced the American Renewable Energy Jobs Act presented their legislation as a “jobs preservation” bill, one meant to foster changes in the Section 1603 program that would prevent “creating manufacturing jobs overseas.” Consequently, other legislators may support the bill, if only to indicate that they too are focused on “preserving US jobs,” especially during an election year.

House Ways and Means Committee Chairman Announces “Leave of Absence” in Light of Ethics Committee Admonishment

On March 3, 2010, House Ways and Means Committee Chairman Charles Rangel (D-NY) announced that he will take a leave of absence as Chairman of the Ways and Means Committee in light of a recent admonishment from the House Committee on Standards of Official Conduct for certain violations regarding improper travel reimbursements. Rep. Rangel was also facing a potential House vote on a Republican-backed privileged motion calling on him to step down from his leadership position. In making his announcement, Rep. Rangel stated that he had decided on his course of action "to avoid my colleagues having to defend me during their elections." According to reports, Speaker of the House Nancy Pelosi (D-CA) has accepted Rep. Rangel's request, although House Minority Leader John Boehner (R-OH) has stated that "the matter requires further study because he is not aware of a process allowing a Chairman to temporarily step down."

Rep. Pete Stark (D-CA), the second most-senior Democrat on the House Ways and Means Committee, was posed to take over as Chairman of the Committee, but opposition began mounting against Rep. Stark. Consequently, Rep. Sander Levin (D-MI), Chairman of the House Ways and Means Trade Subcommittee, will take over as Chairman of the House Ways and Means Committee, according to House Democratic aides.

On February 26, 2010, the House Committee on Standards of Official Conduct had admonished Rep. Rangel 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.

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Free Trade Agreements

Free Trade Agreements Highlights

TPP FTA Negotiators Conclude First Round of Talks

On March 15, 2010, the eight members of the proposed Trans Pacific Partnership (TPP) Free Trade Agreement (FTA) began weeklong negotiations in Melbourne, Australia. Officials from the United States, Australia, Brunei Darussalam, Chile, New Zealand, Peru, Singapore, and Vietnam convened for the first round of negotiations at which all negotiating partners reaffirmed their commitment to building a high quality, broad-based regional agreement.

During the first round of negotiations, the FTA negotiating groups on industrial goods, agriculture, sanitary and phytosanitary standards, telecommunications, financial services, customs, rules of origin (ROO), intellectual property rights (IPR), government procurement, environment, and trade capacity building met and agreed to draft papers on a variety of issues, including papers on specific issues that emerged during the first round's discussions, new areas that the TPP members may be able to incorporate in the agreement, and "methods of incorporating issues that cut across the agreement." The groups agreed to complete this work ahead of the second TPP negotiating round scheduled for June 14, 2010 in the United States. According to reports, Brunei has offered to host the third round of talks in October 2010 with the fourth round held in December 2010 at a location yet to be formalized. Officials opined that the first round of negotiations was "extremely productive" and "set the negotiations off to a strong start."

At the first round, negotiators also discussed the goal of expanding the agreement to countries throughout the Asia-Pacific area. At this stage, although no other countries have formally announced their intent to join the TPP FTA negotiations, publicly-available information indicates that Malaysia - which has launched a study on the feasibility of joining the regional negotiations - may soon express its interest to join the talks. Nonetheless, according to our sources, TPP negotiators from the primary eight countries negotiating the agreement have not yet agreed on a formal mechanism for the inclusion of other negotiating partners to the FTA talks.

Although the TPP FTA negotiating groups were able to meet in the first round of negotiations and agreed on the work they would need to complete before the second round, observers did not expect much substantive movement to emerge from the first set of discussions. Officials have indicated that the talks were positive and have set a good precedent for future rounds. Nonetheless, it may still be too early to predict that the talks will proceed smoothly in future rounds. United States Trade Representative (USTR)

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Ron Kirk has indicated that he intends to discuss the first round with Members of Congress and consult with them on how US negotiators should proceed in the next several rounds. Pressure from Members of Congress on US TPP negotiators to address their concerns at the following rounds (on issues such as labor and the environment) could serve to drag out the negotiations. In addition, although TPP countries have indicated their willingness to consider other countries joining the talks, any new participants may also slow the talks down, although some observers opine that it may actually serve the negotiations better if any new countries were to join the talks in the initial stages as opposed to a later stage when new countries would likely have to play catch-up. The subsequent rounds should provide more information on the countries' negotiating stances and any issues that may serve to delay the TPP FTA talks, and a better picture on how smoothly the negotiations will proceed should also emerge after the second and third rounds.

USTR Discusses TPP FTA Negotiations with House Trade Working Group

On March 10, 2010, United States Trade Representative (USTR) Ron Kirk met with members of the House Trade Working Group to discuss the negotiations of the Trans-Pacific Partnership (TPP) Free Trade Agreement (FTA) and other trade matters. TPP negotiations begin on March 15, 2010, in Melbourne, Australia, and the United States will be meeting with New Zealand, Chile, Brunei, Singapore, Australia, Vietnam, and Peru at the first round of talks. At the meeting, USTR Kirk met with House Trade Working Group Chairman Mike Michaud (D-ME) and other members of the group.

At the meeting, USTR Kirk discussed labor and environmental standards, food safety and agricultural terms, procurement rules, democracy clauses, services deregulation, access to medicines, and foreign investor rights in the context of the TPP negotiations. At the meeting, the participants also discussed Rep. Michaud's Trade Reform, Accountability, Development, and Employment Act ("TRADE Act," H.R. 3012), which, among other things, calls for a renegotiation of existing trade agreements prior to the negotiating of any new agreements. Meeting participants also discussed the US-Mexico dispute over Mexican truck access and Japan's "cash for clunkers" program. At the meeting, some legislators raised concerns about the involvement of Brunei, Vietnam, Singapore and Peru in the TPP FTA negotiations with regards to their labor standards and in Vietnam's case, its status as a non-market economy. According to sources, at the meeting, USTR Kirk did not make any commitments on the discussion issues.

Following the meeting, USTR Kirk stated that the meeting was a "constructive dialogue" and that he and the Members of Congress were attempting to find common ground on the TPP negotiations and other US

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trade issues. He added that he would continue to consult regularly with the appropriate House and Senate committees and other Members of Congress. Rep. Michaud opined that “the meeting was an encouraging sign that the Obama Administration was committed to consulting with Congress on Democrats’ trade agenda.”

Observers opine that the USTR will continue to meet with the Working Group and other legislators in order to consult with them on the TPP FTA. Although these meetings could serve to increase the political goodwill between Administration officials and legislators on the TPP FTA, the meetings could also translate to increased pressure from Members of Congress on USTR to meet their demands with regards to labor, the environment and other issues. US negotiators will thus have to balance the their trading partners’ offers and the demands of US legislators seeking more out of the agreement. Consequently, US officials may drag the TPP FTA negotiations longer than usual in their effort to balance the two sides’ needs. Even more disconcerting for some observers is that USTR Kirk and the legislators do not appear to have discussed the pending FTAs with Colombia, Panama and Korea, which could mean that USTR is focusing more on the TPP FTA than the fate of the pending agreements.

Rep. Taylor Introduces Bill to Withdraw US from NAFTA

On March 4, 2010, Rep. Gene Taylor (D-MS) introduced a bill that proposes to withdraw the United States from the North American Free Trade Agreement (NAFTA) (H.R. 4759). The bill proposes that the North American Free Trade Agreement Implementation Act “shall cease to be effective” after H.R. 4759’s passage. In addition, H.R. 4759 states that on the date of the bill’s passage, the President will provide to the Governments of Canada and Mexico written notice of withdrawal of the United States from the NAFTA. The bill has 27 co-sponsors and was last referred to the House Ways and Means Committee.

According to Rep. Taylor and the other legislators sponsoring the bill, “NAFTA and similar free trade agreements have resulted in a 29 percent decline in US manufacturing employment since 1993 [and] NAFTA discourages investments in US manufacturing facilities and accelerates the erosion of our industrial base.” The legislators note that in 1993 prior to the United States entering into the NAFTA, “the United States had a trade surplus of USD 1.7 Billion with Mexico [but] by 2007 this trade surplus turned into a massive deficit that peaked at USD 75 Billion.” Upon introducing the bill, Rep. Taylor stated that “Mississippi has been hit particularly hard, losing 39 percent of its manufacturing jobs, 240,000 people worked in manufacturing jobs prior to NAFTA [and] as a result of this trade agreement, 93,000 jobs have left the state.” During his Presidential campaign, President Obama pledged to renegotiate or withdraw the United States from the NAFTA, although after the campaign, such pledges disappeared. Observers

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opine that many House Democrats are critical that President Obama did not live up to his campaign rhetoric.

House Ways and Means Trade Subcommittee Ranking Member Kevin Brady (R-TX) has criticized Rep. Taylor's bill, highlighting that the NAFTA was the combined largest market for US goods in 2009, with exports to Canada and Mexico totaling USD 333 billion and stating that "it may be popular to bash NAFTA, but the fact of the matter is that repealing it would kill American jobs, deepen our recession, and threaten our relationship with two key allies." Private sector groups have also criticized the bill. The National Association of Manufacturers (NAM) has noted that over the past decade, the NAFTA has "brought US manufacturers enormous opportunities for growth, particularly with regard to export-driven jobs." Dan Griswold of The Cato Institute also criticized Rep. Taylor's NAFTA withdrawal proposal, noting that "overall output at US factories was actually 37 percent higher in 2009 compared to 1993, the year before NAFTA took effect, according to . . . the latest Economic Report of the President," and opining that the NAFTA has "spurred more trade and deeper integration among the three partner countries [and] has created new opportunities for American companies and their workers to raise their competitiveness in global markets."

H.R. 4759 is unlikely to receive major support and is unlikely to see significant forward movement through Congress and the Obama Administration. Several observers opine that the bill provides Rep. Taylor with an opportunity to promote his anti-trade stance and to garner political and constituent support under a "prevent manufacturing job losses" campaign. According to several reports, this is not the first time that Rep. Taylor has proposed US NAFTA withdrawal. Observers note that in 1995, he cosponsored a bill calling for US withdrawal from NAFTA, and was also a cosponsor of similar legislation in 2007. He also voted in favor of withdrawing the United States from the World Trade Organization in 2005 and voted against the NAFTA, the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA) and Free Trade Agreements (FTAs) with with Morocco, Australia, Singapore, Peru, Chile, Bahrain, and Oman.

Customs

ITC Seeks Public Comment on Proposed Changes to US Harmonized Tariff Schedule

In a March 9, 2010 Federal Register (FR) notice, the International Trade Commission (ITC) announced the institution of Investigation No. 1205-7 (“Proposed Modifications to the Harmonized Tariff Schedule of the United States”) pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (75 FR 10818-10820). Section 1205 directs the ITC to continuously review the Harmonized Tariff Schedule of the United States (HTS) and recommend modifications to the President when the World Customs Organization (WCO) recommends the adoption of amendments to the international Convention on the Harmonized Commodity Description and Coding System (“Harmonized System”), and as other circumstances warrant.

On June 26, 2009, the WCO recommended the adoption of certain modifications to the Harmonized System nomenclature that are scheduled to become effective on January 1, 2012. The ITC’s report will set forth the proposed changes to the HTS that would be necessary to conform the HTS with the international Harmonized System. The June 26, 2009 WCO Recommendation is available through this [link](#).

The ITC will publish its preliminary report on **April 9, 2010**; the report will be made available on the ITC website (www.usitc.gov). Interested parties are invited to comment on the preliminary report on or before **May 21, 2010**. The ITC will submit its final report to the President on **June 25, 2010**.

Multilateral

CAMEX Publishes Brazil's Final Retaliation List in Cotton Dispute with United States

On March 8, 2010, the Brazilian Foreign Trade Chamber (CAMEX) published in the Official Gazette **Resolution n. 15**, which provides for a list of 102 products that could potentially face higher import tariffs when imported into Brazil from the United States. This measure is consistent with the World Trade Organization (WTO) Dispute Settlement Body (DSB) ruling that authorized Brazil to impose retaliatory measures against the United States in the amount of USD 829 million per year for its failure to comply with the WTO rulings in the *US – Subsidies on Upland Cotton* (DS267) dispute. On March 8, 2010, Brazil notified the WTO regarding the publication of the list.

Resolution n. 15 will enter into force within 30 days after its publication in the Official Gazette if the United States and Brazil fail to reach an amicable settlement to the dispute. The increased import tariffs will be in force for 365 days. Tariffs on these products would increase from their current levels to levels up to 100 percent in some cases. Tariffs on vehicles would increase from 35 percent to 50 percent. The highest tariffs would be applied to imports of cotton and woven fabrics.

According to a press release issued by the Brazilian Ministry of Foreign Affairs (MFA) and the Brazilian Ministry of Development, Industry and International Trade (MDIFT), the list of goods corresponds to an amount of retaliation totaling USD 591 million. The remaining annual amount of retaliation to which Brazil is entitled – USD 238 million – will be applied to the intellectual property (IP) and services sectors. According to MDIFT, CAMEX is expected to launch public consultations on a list of measures related to IP and other rights at CAMEX's next meeting on March 23, 2010. In February 2010, the government issued a provisional measure that allows Brazil suspend IPR in cross-retaliation for illegal subsidies adopted by other countries, including the United States.

The press release also stated that although retaliation is not Brazil's preferred avenue for reaching fairer trade, "in the absence of concrete and realistic options" from the United States, Brazil has no choice but to exercise its right of retaliation authorized by the WTO. Nevertheless, the MFA has stated that "Brazil remains open to a dialogue with the United States, aimed at reaching a mutually satisfactory solution for the dispute."

The United States Trade Representative (USTR) issued a statement underscoring that "USTR is working to reach a solution to the issues in the dispute without Brazil resorting to countermeasures and we

continue to prefer a negotiated solution.” On March 9, 2010, US Commerce Secretary Gary Locke arrived to Brasilia to discuss this issue among other items on the Brazil-US bilateral trade agenda.

Brazil’s final retaliation list published on March 8, 2010 includes the following products classified under the following tariff headings of Mercosur’s Nomenclature (NCM):

LIST OF GOODS SUBJECT TO SUSPENSION OF BRAZIL’S CONCESSIONS AND OTHER OBLIGATIONS AT THE WTO

NCM Code	Description	Current Applied Tariff	Increased Tariff (applied to US goods only)
0303.51.00	Frozen Herrings (<i>Clupea harengus</i> , <i>Clupea pallasii</i>)	10%	30%
0402.10.10	Milk and cream in solid forms, of a fat content by weight of <= 1,5%, of an arsenic, lead or copper content, taken separately, of less than 5 ppm	28%	48%
0404.10.00	Whey and modified whey, whether or not concentrated or containing added sugar or other sweetening matter	28%	48%
0504.00.13	Guts of swine, fresh, chilled, frozen, salted, in brine, dried or smoked	8%	28%
0802.21.00	Fresh or dried hazelnuts or filberts <i>Corylus</i> spp., in shell	6%	26%
0802.31.00	Fresh or dried walnuts in shell	10%	30%
0802.32.00	Fresh or dried walnuts, shelled and peeled	10%	30%
0806.20.00	Dried grapes	10%	30%
0808.20.10	Fresh pears	10%	30%
0809.20.00	Fresh cherries	10%	30%
0809.40.00	Fresh plums and sloes	10%	30%
1001.90.90	Wheat and meslin (excl. seed and durum wheat)	10%	30%
1502.00.11	Fats of bovine animals, raw	6%	26%
1507.90.90	Other soya-bean oils	10%	30%
1514.11.00	Low erucic acid rape or colza oil, crude	10%	30%
1514.19.10	Low erucic acid rape or colza oil, refined	10%	30%
2005.20.00	Potatoes, prepared or preserved (excl. frozen)	14%	34%
2009.90.00	Mixtures of juices, unfermented	14%	34%
2103.20.10	Tomato ketchup and other tomato sauces in immediate containers holding not more than 1 kg	18%	38%
2103.90.91	Preparations for sauces and prepared sauces in immediate containers holding not more than 1 kg	18%	38%
2106.10.00	Protein concentrates and textured protein substances	14%	34%
2106.90.30	Preparations often referred to as food supplements	16%	36%
2106.90.50	Sugar-free chewing gum	16%	36%
2106.90.90	Other food preparations	16%	36%
2202.90.00	Other non-alcoholic beverages (excl. water, fruit or vegetable juices and milk)	20%	40%

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NCM Code	Description	Current Applied Tariff	Increased Tariff (applied to US goods only)
2303.20.00	Beet-pulp, bagasse and other waste of sugar manufacture	6%	26%
2905.11.00	Methanol (methyl alcohol)	12%	22%
2929.10.21	Isomer mixtures of toluene diisocyanates	14%	28%
3003.90.55	Medicaments containing paracetamol or bromopride, not in measured doses	14%	28%
3004.20.19	Medicaments containing amphenicols or their derivatives, put up in measured doses	8%	14%
3004.20.79	Other medicaments containing polypeptides or their derivatives, put up in measured doses	8%	14%
3004.39.39	Medicaments containing other oestrogens or progestogens, put up in measured doses	8%	14%
3004.40.90	Other medicaments containing alkaloids or derivatives thereof, not containing hormones, steroids used as hormones or antibiotics, put up in measured doses	8%	14%
3004.90.49	Other medicaments consisting of mixed or unmixed products, put up in measured doses	8%	14%
3005.10.90	Other adhesive dressings and other articles having an adhesive layer	0%	12%
3006.10.90	Other sterile surgical catgut and similar sterile suture materials for surgical wound closure	12%	22%
3303.00.20	Toilet waters	18%	36%
3304.10.00	Lip make-up preparations	18%	36%
3304.99.10	Beauty creams; tonic lotions	18%	36%
3304.99.90	Other beauty or make-up preparations and preparations for the care of the skin	18%	36%
3305.10.00	Shampoos	18%	36%
3305.90.00	Other preparations for use on the hair	18%	36%
3306.10.00	Dentifrices	18%	36%
3306.90.00	Other preparations for oral or dental hygiene	18%	36%
3307.10.00	Pre-shave, shaving or after-shave preparations	18%	36%
3307.20.90	Other personal deodorants and antiperspirants	18%	36%
3307.90.00	Other depilatories and other perfumery, toilet or cosmetic preparations	18%	36%
3401.19.00	Other soap and organic surface-active products and preparations	18%	36%
3402.90.39	Other surface-active and washing preparations	18%	36%
3923.30.00	Carboys, bottles, flasks and similar articles	18%	36%
4011.10.00	New pneumatic tires, of rubber, of a kind used on motor cars (including station wagons and racing cars)	16%	32%
4011.20.90	Other new pneumatic tires, of rubber, of a kind used for buses and lorries	16%	32%

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JETRO General Trade Monthly Report

NCM Code	Description	Current Applied Tariff	Increased Tariff (applied to US goods only)
4908.90.00	Other transfers decalcomanias	16%	32%
5201.00.20	Cotton, neither carded nor combed, not further prepared than ginned	6%	100%
5201.00.90	Other types of cotton, neither carded nor combed	6%	100%
5203.00.00	Cotton, carded or combed	8%	100%
5208.21.00	Plain woven fabrics of cotton, containing $\geq 85\%$ cotton by weight and weighing ≤ 100 g/m ² , unbleached	26%	100%
5209.32.00	Woven fabrics of cotton, containing $\geq 85\%$ cotton by weight and weighing > 200 g/m ² , in three-thread or four-thread twill, incl. cross twill, dyed	26%	100%
5703.20.00	Carpets and other floor coverings, of nylon or other polyamides, tufted needle punched	35%	60%
5903.90.00	Textile fabrics impregnated, coated, covered or laminated with plastics other than polyvinyl chloride or polyurethane	26%	48%
6116.10.00	Gloves impregnated, coated or covered with plastics or rubber	35%	60%
6203.42.00	Men's or boys' trousers, bib and brace overalls, breeches and shorts, of cotton	35%	100%
6204.62.00	Women's or girls' trousers, bib and brace overalls, breeches and shorts of cotton	35%	100%
6303.92.00	Curtains, incl. drapes, and interior blinds, curtain or bed valances of synthetic fibers	35%	60%
6307.90.10	Other made-up articles of textile materials, of synthetic fibers	35%	60%
6307.90.90	Other made-up articles of textile materials	35%	60%
7113.19.00	Articles of jewellery and parts thereof, of other precious metal other or not plated or clad with precious metal	18%	36%
8212.10.20	Non-electric razors	18%	36%
8212.20.10	Safety razor blades of base metal	18%	36%
8418.40.00	Freezers, upright, not exceeding 900 liters capacity	20%	40%
8433.11.00	Mowers for lawns, parks or sports grounds, powered, with the cutting device rotating in a horizontal plane	18%	36%
8471.90.12	Bar-code readers	12%	22%
8506.80.90	Other primary cells and primary batteries, electric	16%	32%
8516.60.00	Other ovens; cookers, cooking plates, boiling rings, grillers and roasters, for domestic use	20%	40%
8517.12.31	Portable telephones for cellular networks (excl. satellite)	16%	32%
8518.10.90	Other microphones and stands thereof	20%	40%
8518.21.00	Single loudspeakers, mounted in their enclosures	20%	40%
8518.22.00	Multiple loudspeakers, mounted in the same enclosure	20%	40%
8518.30.00	Headphones and earphones, whether or not combined	20%	40%

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JETRO General Trade Monthly Report

NCM Code	Description	Current Applied Tariff	Increased Tariff (applied to US goods only)
	with a microphone, and sets consisting of a microphone and one or more loudspeakers		
8518.50.00	Electric sound amplifier sets	20%	40%
8521.90.90	Other video recording or reproducing apparatus	20%	40%
8525.80.19	Other television cameras	20%	40%
8525.80.29	Other digital cameras and video camera recorders	20%	40%
8527.21.90	Other radio-broadcast receivers, of a kind used in motor vehicles, combined with sound recording or reproducing apparatus	20%	40%
8528.49.29	Other color cathode-ray tube monitors	20%	40%
8703.21.00	Motor cars and other motor vehicles with spark-ignition internal combustion reciprocating piston engine of a cylinder capacity $\leq 1,000 \text{ cm}^3$	35%	50%
8703.23.10	Motor cars and other motor vehicles with spark-ignition internal combustion reciprocating piston engine of a cylinder capacity $> 1,500 \text{ cm}^3$ but $\leq 3,000 \text{ cm}^3$, with a seating capacity of not more than 6, including the driver	35%	50%
8703.24.10	Motor cars and other motor vehicles with spark-ignition internal combustion reciprocating piston engine of a cylinder capacity $> 3,000 \text{ cm}^3$, with a seating capacity of not more than 6, including the driver	35%	50%
8703.24.90	Motor cars and other motor vehicles with spark-ignition internal combustion reciprocating piston engine of a cylinder capacity $> 3,000 \text{ cm}^3$, with a seating capacity exceeding 6 including the driver	35%	50%
8703.33.10	Motor cars and other motor vehicles with compression-ignition internal combustion piston engine diesel or semi-diesel engine of a cylinder capacity $> 2.500 \text{ cm}^3$, with a seating capacity of not more than 6, including the driver	35%	50%
8711.50.00	Motorcycles, incl. mopeds, with reciprocating internal combustion piston engine of a cylinder capacity $> 800 \text{ cm}^3$	20%	40%
8903.92.00	Motorboats, other than outboard motorboats	20%	40%
8903.99.00	Other vessels for pleasure or sports, including rowing boats	20%	40%
9004.10.00	Sunglasses	20%	40%
9008.30.00	Other image projectors	18%	36%
9018.32.19	Other tubular metal needles	16%	32%
9018.39.10	Other needles	16%	32%
9021.10.20	Splints and other fracture appliances	4%	14%
9021.39.80	Other artificial parts of the body	14%	28%
9102.11.10	Wrist-watches, whether or not incorporating a stop-watch facility, electrically operated, with mechanical	20%	40%

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NCM Code	Description	Current Applied Tariff	Increased Tariff (applied to US goods only)
	display only with case of base metal		
9403.70.00	Furniture of plastics	18%	36%
9603.21.00	Tooth brushes, including dental-plate brushes	18%	36%

Multilateral Highlights

US Requests WTO Dispute Settlement Panel on Philippines' Taxes on Distilled Spirits

On March 26, 2010, the United States requested the formation of a World Trade Organization (WTO) dispute settlement panel to rule on US complaints regarding the Philippines' taxes applied to distilled spirits. According to USTR, "the Philippines taxes imported distilled spirits at significantly higher rates than domestic distilled spirits." A USTR press release noted that the Philippines applies tax rates to distilled spirits that differ depending on the product from which the spirit is distilled. The Philippines taxes distilled spirits made from certain materials that are typically produced in the Philippines, such as sugar and palm, at a low rate, whereas the Philippines taxes imported distilled spirits "at significantly higher rates (from approximately ten to forty times higher) than the low rate applied to domestic products."

On January 14, 2010, the United States had requested WTO dispute settlement consultations with the Philippines regarding the excise taxes on imported distilled spirits. The two sides were unable to reach a settlement on the matter, consequently leading the United States to request the formation of the dispute settlement panel.

This is not the first time that the United States has broached the issue of taxes on distilled spirits. According to USTR, the United States has raised concerns over this issue with the Philippines over the past several years and participated in consultations between the EU and the Philippines in October 2009 on the same issue.

United States Notes Increase in Antidumping, Countervailing Duty Investigations in Report to WTO

On March 18, 2010, the United States submitted its semiannual report to the World Trade Organization (WTO) in which it reported that there was an increase in the number of new antidumping and

countervailing investigations initiated in the second half of 2009. Specifically, the United States reported that the Department of Commerce (DOC) initiated 13 new antidumping investigations between July 1 and December 31, 2009, an increase over the six new investigations initiated in the first half of 2009:

- According to the report, China was the subject of nine new US antidumping investigations in the second half of 2009, Taiwan was subject to two new investigations, and Indonesia and Mexico were subject to one investigation each.
- The report noted that the United States adopted five final duty orders, a decrease from the 10 orders adopted in the first half of 2009. Three of the new final US duty orders targeted imports from China, with one duty order each targeting imports from Indonesia and South Korea.
- In 2009, the United States withdrew two antidumping duty orders, for barbed wire from Argentina and color television receivers from China. The United States maintained eleven other duty orders following sunset reviews recommending their continued application.

The United States also reported an increase in the number of new countervailing duty (CVD) investigations initiated in the second half of 2009:

- DOC initiated nine new CVD investigations between July 1 and December 31, 2009, an increase from the six new investigations it initiated in the first half of the year and the three investigations it initiated in 2008.
- China was the target of eight of the new investigations in the second half of 2009, and Indonesia was the target of one investigation.
- The United States also imposed three new final CVD orders in the second half of 2009, with two duty orders targeting imports from China and one targeting imports from India.

CAMEX Requests Public Comments on Brazil's IPR Retaliation List in Cotton Dispute with United States

On March 15, 2010, the Brazilian Foreign Trade Chamber (CAMEX) published in the Official Gazette Resolution No. 16, requesting public comments on a set of measures related to the suspension of certain intellectual property rights (IPR) that Brazil may apply against the United States in response to the US non-compliance with the rulings of the WTO Dispute Settlement Body (DSB) in the dispute *United States*

– *Subsidies on Upland Cotton* (DS267). These measures relate to Provisional Measure No. 482,² published in the Official Gazette on February 10, 2010.

According to the Brazilian Ministry of Development, Industry and Foreign Trade (MDIFT), on November 19, 2009, the DSB authorized Brazil to apply countermeasures in the area of intellectual property rights and services in conformity with the DSB rulings of August 31, 2009 (WT/DS267/ARB/1 and WT/DS267/ARB/2). Brazil estimates that the retaliation against the United States may reach up to USD 238 million per year. The authorized cross-retaliation measures could remain in force as long as the United States fails to implement the WTO rulings on cotton subsidies.

CAMEX Resolution No. 16 establishes that interested parties must submit their comments to the MDIFT within 20 days from the date of publication of Resolution No. 16 (*i.e.*, by April, 2010), by completing and attaching the Form of Annex V of Camex Resolution No. 16. The Brazilian government will engage in a thorough analysis of the comments provided by interested parties and make a decision on the set of punitive measures applicable to US holders of IP rights. The IP measures will complement the countermeasures in the area of goods (*See W&C Alert--CAMEX Publishes Brazil's Final Retaliation List in Cotton Dispute with the United States*, March 10, 2010).

According to MDIFT, Brazil intends to bring the United States into compliance with its WTO obligations and make sure it abides by international trade rules which have been agreed by all WTO Members. The measures also seek to safeguard the credibility and legitimacy of the multilateral dispute settlement system. Although MDIFT notes that “Brazil remains open to dialogue with the United States to find an amicable settlement to the cotton dispute,” to date, the Brazilian government has not received an official proposal for compensation from the United States. The US government has until April 7, 2010 to strike an agreement with Brazil before Brazil’s punitive tariffs on goods and suspension on IP rights take effect.

² Provisional Measure (PM) No. 482 is a measure of general application that will be applied for the first time in the cotton retaliation against the United States but could be applied for other cross retaliation measures in the future. The outcome of the cotton retaliation arbitration at the WTO prompted the Brazilian government to issue PM No. 482, which does not make specific reference to the *US – Upland Cotton* dispute. It only establishes the procedures related to cross-retaliation measures authorized by the WTO. PM No. 482 only establishes the procedures that will allow Brazil to “cross-retaliate” and suspend its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPs Agreement”). PM No. 482 provides the guidelines for Brazil to apply the sanctions in IP that the DSB authorized. The measure also allows for a wide range of countermeasures against US owners of IP rights, including: (i) suspension of IP rights; (ii) limitation of IP rights; (iii) modification in the process for obtaining and maintaining IP rights; and (iv) suspension of remittances for the payment of royalties, among others. Trade sanctions under PM No. 482 relate to Part II, Part III and Part IV of the TRIPs Agreement, which deal with patents, brands, geographic indicators, integrated circuits, and software.

Number	Measure
1	Removal, for a determined period of time, of the term of protection of rights over patents of medicines, including drugs for animal use.
2	Removal, for a determined period of time, of the term of protection of rights over products or processes related to chemical agricultural products.
3	Removal, for a determined period of time, of the term of protection of rights over agricultural biotechnological products or processes.
4	Removal, for a determined period of time, of the term of protection of rights over products or processes related to cultivars.
5	Removal, for a determined period of time, of the term of protection of copyrights and correlated rights over musical public execution
6	Licensing of patents of products or processes related to medicines, including for medicines for veterinarian use, with no authorization by the holder or remuneration.
7	Licensing of patents of products or processes related to agro-chemical products, with no authorization by the holder or remuneration.
8	Licensing of patents of products related to agricultural products or biotechnological processes, with no authorization by the holder or remuneration.
9	Licensing of copyrights and correlated rights over literary works, with no authorization by the holder or remuneration.
10	Licensing of copyrights and correlated rights over public exhibition of audiovisual works, with no authorization by the holder or remuneration.

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Number	Measure
11	Suspension of the holder's exclusive right to prevent the importation and trade in the domestic market of medicines, including veterinary medicines, subject to patent rights, even if the imported asset has not yet been placed in the foreign market directly by the holder of intellectual property rights or with his/her consent.
12	Suspension of the holder's exclusive right to prevent the importation and trade in the domestic market of agro-chemical products subject of patent rights, even if the imported asset has not yet been placed in the foreign market directly by the holder of intellectual property rights or with his/her consent.
13	Suspension of the holder's exclusive right to prevent the importation and trade in the domestic market of agro-biotechnological products, even if the imported asset has not yet been placed in the foreign market directly by the holder of intellectual property rights or with his/her consent.
14	Increase of fees or payment of additional fees due to the Brazilian Industrial Property Office (INPI) to process the registration of industrial property rights, including its granting and maintenance.
15	Increase of fees or payment of additional fees due to the National Service of Protection of Cultivations (SNPC) to process the registration of intellectual property rights, including its granting and maintenance.
16	Increase of fees or payment of additional fees due to the agencies of copyright and correlated rights to proceed with the referred registrations.
17	Placement of commercial rights over the remuneration due to the holder of intellectual property rights on patent matters.
18	Placement of commercial rights over the remuneration due to the holder of intellectual property rights on trademarks.
19	Placement of commercial rights over the remuneration due to the holder of intellectual property rights in copyrights and correlated rights except those related to software.

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Number	Measure
20	Placement of commercial rights over the remuneration due to the holder of intellectual property rights in copyrights and correlated rights related to software.
21	The creation of a legal obligation to register copyrights for obtaining and maintaining patrimonial rights and correlated rights.

According to MDIFT, Brazil intends to bring the United States into compliance with its WTO obligations and make sure it abides by international trade rules which have been agreed to by all WTO Members. Brazilian officials argue that the above referenced measures also seek to safeguard the credibility and legitimacy of the multilateral dispute settlement system. Although MDIFT officials note that “Brazil remains open to dialogue with the United States to find an amicable settlement to the cotton dispute and prevent the suspension of certain IP rights and the imposition of punitive tariffs on certain goods, to date, the Brazilian government has not received an official proposal for compensation from the United States. The US government has until April 7, 2010 to strike an agreement with Brazil before Brazil’s punitive tariffs on goods and suspension on IP rights take effect, and is under strong pressure from its domestic pharmaceutical and agricultural industries to reach an amicable settlement with the Brazilian government. Analysts opine that Brazil’s readiness to retaliate against the United States evidences Brazilian officials’ frustration with the United States’ refusal to remove its cotton subsidies and comply with WTO rules. The Brazilian government is also under strong pressure from Brazilian cotton growers to bring the United States into compliance with its WTO commitments. Without a clear intent from the Obama Administration to bring the United States into compliance with its WTO commitments on cotton subsidies, Brazil will impose retaliatory measures against the United States, an action that will certainly increase tension in US-Brazil trade relations and will reinforce the perception, already shared among key US trading partners over the United States’ protectionist stance on certain trade matters.

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WTO Report Highlights Decrease in Trade Restrictive Measures by G-20 Members

On March 8, 2010, the World Trade Organization (WTO) released a report on countries' response to the global economic downturn during the period September 2009 to February 2010. In its report, the WTO – along with the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD) – concluded that the Group of 20's (G-20) use of restrictive trade practices has decreased in the past several months. According to the report, “new trade restrictions by G-20 members have been less pronounced than in the period covered by the first G-20 report on the subject issued in September 2009.”

The report notes that “although some G-20 members continued to implement new trade restrictive policies, in apparent contradiction to their pledges at London and Pittsburgh, the overall extent of these restrictions has been limited and an escalation of protectionism has continued to be avoided.” The report also notes that G-20 members have instituted more trade-opening measures in place of potentially trade restrictive measures; what new trade restrictions have been instituted “tend to be concentrated in sectors that are already relatively highly protected, such as minerals, textiles and metal products,” as well as in sectors that are labor-intensive. The WTO Secretariat has calculated that new import restricting measures introduced since September 2009 until mid-February 2010 by G-20 members, along with new initiations of investigations into the imposition of trade remedy measures, cover 0.7 percent of G-20 imports, or 0.4 percent of total world imports.

With regards to global trade, the report states that the volume of global trade fell by 12 percent in 2009, although the report notes that “there is recent evidence of a resumption of growth in world trade and output, particularly an apparently strong recovery of trade growth in the Asia-Pacific region in the past few months that has been led by China.” The report also notes that “foreign direct investment has also experienced a widespread fall in 2009 that affected all countries and regions, but a fragile recovery is expected to build-up during the course of 2010.” The report states that “G-20 governments [need] to remain vigilant in opposing protectionism, to devise and announce publicly as soon as possible exit strategies from any trade restrictions or other measures with trade restrictive or distorting effects that were taken in response to economic conditions last year, so as to undercut protectionist pressures in favor of making these measures permanent.”

The full report is available at: http://www.wto.org/english/news_e/news10_e/trim_report_08mar10_e.doc.