



White & Case LLP General Trade Report - JETRO

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UNITED STATES

GENERAL TRADE POLICY

Trade Promotion Authority and the Trans-Pacific Partnership: Can the President & Congress Thread the Needle in 2015?

Summary

Movement on the United States international trade agenda has intensified in recent weeks, but the enactment of key US trade legislation in 2015 will require intense cooperation and near-perfect execution by the Obama Administration and the Republican Party leadership in Congress. The two branches of government have identified the enactment of Trade Promotion Authority (TPA) legislation as a top priority for 2015 because securing TPA early in 2015 will be essential to facilitate the swift conclusion of the Trans-Pacific Partnership (TPP) negotiations, allowing Congress to consider legislation implementing the TPP before the end of the year.¹ These goals are shared by Congressional Republicans, who support prompt enactment of TPA as a means of producing a favorable outcome for the United States in the TPP negotiations. Given the alignment of interests between President Obama and Congressional Republicans, and a lack of fall-out from non-trade disagreements between the executive branch and legislative branch, a more optimistic outlook has emerged for the timely enactment of TPA and Congressional approval of TPP in 2015.

Nevertheless, several remaining issues prevent the 2015 completion of both TPA and TPP from being more than only a best-case scenario. Nearly all Congressional Democrats strongly oppose TPA and TPP and will complicate efforts to enact TPA by offering controversial amendments and accompanying legislation. If the White House and Republican leadership in Congress are unable to overcome these challenges, timely enactment of TPA in 2015 might not be possible, and the conclusion of the TPP negotiations could be delayed. Even if the TPP negotiations can be concluded in 2015, the window of opportunity for Congressional approval of the completed agreement will be limited. Congress is less likely to support legislation implementing the TPP while in the midst of the US Presidential campaign season, which is set to begin in the autumn. Therefore, a signed TPP agreement will likely need to be ready for Congressional consideration by mid-autumn to maximize prospects for approval.

¹ The TPP is a proposed regional free trade agreement between the United States, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

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Background

TPA commits Congress to use expedited (*i.e.*, “fast track”) procedures to consider legislation to implement certain trade agreements that the President negotiates during a specified period of time. In so doing, TPA enables the President and foreign governments to negotiate trade agreements with the assurance that Congress, rather than amending any negotiated agreement, will wholly accept or reject any such agreement via a timely “up or down” vote. Absent this assurance, foreign governments might have reduced incentives to negotiate trade agreements with the United States due to concerns that Congress might reject or revise individual clauses of such agreements. In exchange for this assurance, and as outlined in legislation to implement TPA, the President must adhere to certain negotiating objectives and certain procedures to notify and consult with Congress regarding the progress of any negotiations.

TPA was first enacted in 1975 and renewed in 1979, 1984, 1988, and 2002. Congress has used TPA to enact the Tokyo Round Agreements Act of 1979, the Uruguay Round Agreements Act of 1994, and 14 bilateral or regional trade agreements. The most recent iteration of TPA was enacted in December 2002 and expired in July 2007. With the exception of President Obama, every president since Franklin D. Roosevelt in the 1930s has possessed TPA or a special trade negotiating authority similar to TPA.

The overwhelming majority of Congressional Republicans, including Senate Majority Leader Mitch McConnell (R-KY) and House Speaker John Boehner (R-OH), are supportive of granting TPA to President Obama for the purpose of concluding the TPP negotiations. These efforts are also supported by key Republican Committee Chairmen, including Senate Finance Committee Chairman Orrin Hatch (R-UT) and House Ways and Means Committee Chairman Paul Ryan (R-WI), who have identified the enactment of TPA legislation as a top priority for 2015. Republicans currently hold majorities in the House of Representatives (246 to 188) and in the Senate (54 to 46).² A small but vocal group of Republicans, some dubiously claiming to represent the Tea Party, oppose TPA and TPP, but should not be able to derail the agenda. In fact, most “Tea Party Republicans” support trade agreements and TPA, as do most grassroots conservative groups.

The more important congressional impediment to TPA and TPP lies in the Democratic caucus. The large majority of Congressional Democrats oppose TPA, and voted overwhelmingly in the Senate to oppose legislation that would have granted TPA to President Obama in 2011. At the leadership level, Senate Minority Leader Harry Reid (D-NV) has signed a petition opposing TPA, and House Minority Leader Nancy Pelosi (D-CA) has also expressed strong skepticisms. Senate Finance Committee Ranking Member Ron Wyden (D-OR) has opposed previous iterations of TPA, but has proposed an alternative approach known as “smart track” and may support future TPA legislation if elements of that proposal are incorporated. It is estimated that fewer than 30 House Democrats and 10 Senate Democrats will ultimately support legislation to advance the current U.S. trade agenda.

² Figures for the Senate minority include Sens. Angus King (I-ME) and Bernie Sanders (I-VT), who caucus with the Democratic Party.

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Analysis

I. TIMELINE FOR INTRODUCTION OF TPA LEGISLATION

Sen. Hatch has targeted the last week of February for introducing TPA legislation to Congress. Introduction of the legislation might be delayed, however, if Sen. Hatch cannot quickly reach an agreement with Sen. Wyden and Rep. Ryan on the substance of the legislation. The starting point for the ongoing negotiations on the substance of TPA is the text of the *Bipartisan Congressional Trade Priorities Act* (BCTPA), TPA legislation that was co-authored in 2014 by Sen. Hatch and then-Sen. Max Baucus (D-MT). Sen. Hatch has recently stated that his new TPA legislation will be identical to the BCTPA.

However, Sen. Wyden has expressed a desire to make significant changes to the BCTPA and has delivered a proposal to Sen. Hatch and Rep. Ryan outlining those changes. While Sen. Hatch is unlikely to accept substantial changes to the BCTPA, he will likely adopt at least some of Sen. Wyden's proposals in an effort to attract Democratic support. Making such accommodations without alienating Republican lawmakers could prove challenging and might require extensive consultations, potentially delaying introduction of TPA legislation beyond the February target date set by Sen. Hatch.

Introduction of TPA legislation also could be delayed if Congressional Republicans, particularly in the House of Representatives, perceive that Democratic support for the legislation will be minimal. For several political reasons, Republicans have sought assurances from the Obama Administration that proposed TPA legislation will receive substantial Democratic support if introduced. Although the White House has made some efforts in this area, enlisting top cabinet officials in a "whip operation" to persuade House Democrats to support TPA, direct personal engagement from President Obama on the issue has been limited. Some observers have argued that President Obama will need to mount a stronger public defense of TPA and TPP than was offered in his January 20 State of the Union address before a significant number of Democrats will be persuaded to support either initiative. Such Presidential actions are far from certain, however, and as a result, introduction of TPA legislation might be delayed beyond February.

II. TIMING AND PROSPECTS FOR ENACTMENT OF TPA LEGISLATION

In a best-case scenario, in which TPA legislation would be introduced in late February, floor votes on TPA could take place as early as late May. Sources currently differ on whether the House of Representatives or the Senate is likely to take up TPA legislation first; in either case, however, substantial debate over TPA and proposed amendments will occur. Debate in the Senate is likely to be especially time-consuming, as the new Senate Republican leadership has committed to restoring the practice of processing legislation under "regular order" with an open amendment process – procedural rules permitting extensive debate over proposed legislation and amendments. As a result of these and other factors, including the possibility that other issues may come to dominate the Congressional agenda, floor votes on TPA legislation are unlikely to take place before late May. Once floor votes take place, Congress is likely to approve TPA legislation, but a number of potential obstacles exist which could delay or prevent this outcome.

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First, certain Congressional Democrats are likely to seek controversial amendments to any proposed TPA legislation. In particular, Senate Democrats are likely to propose an amendment requiring that trade agreements negotiated under TPA contain enforceable rules designed to combat currency manipulation. Such an amendment would likely be supported by a majority of Democrats and a small number of Republicans, but would result in significantly diminished prospects for TPA legislation if adopted. Thus, considerable efforts will be required from the White House and Congressional Republican leaders to limit support for such amendments if TPA is to be enacted. President Obama has already discouraged Congressional Democrats from seeking to address currency manipulation through TPA and TPP, but the effectiveness of these efforts might be limited due to President Obama's waning political influence.

Second, Congressional Democrats are seeking to include controversial legislation in a broader "omnibus package" with TPA, such as a renewal of Trade Adjustment Assistance (TAA) and recently introduced bills that would deem currency manipulation to be an export subsidy for purposes of US trade remedy investigations.³ The omnibus approach has been suggested as a potential means of simultaneously advancing TPA and other initiatives, such as renewal of the Generalized System of Preferences (GSP), the African Growth and Opportunity Act (AGOA), and customs reauthorization. However, Chairman Ryan prefers to advance these initiatives separately from TPA, and Chairman Hatch recently acknowledged that separate bills "probably" will be necessary. While it is uncertain whether TPA legislation will ultimately be advanced as an omnibus bill, Congressional Democrats would likely insist on the inclusion of TAA renewal, and perhaps currency legislation, in such a package. In fact, the few Congressional Democrats who have expressed support for TPA have stated that such support is conditioned upon the inclusion of TAA renewal and currency-related measures. Republicans largely oppose TAA due to concerns over the program's cost and effectiveness, however, and its inclusion in a trade omnibus bill with TPA would likely cause some conservative Republicans to abandon their support. Sen. Hatch has expressed willingness to consider a limited renewal of TAA in order to secure Democratic support for TPA, but such a compromise will need to be crafted carefully to minimize Republican opposition. Greater bipartisan support exists for non-FTA-related currency legislation, but inclusion of such a measure in TPA would still likely prove to be divisive.

Finally, in the event that a trade omnibus bill featuring TPA is introduced, concerns over the manner in which initiatives such as TAA, GSP and AGOA will be funded could be problematic. In the cases of AGOA and GSP, foregone tariff revenues will need to be offset by revenue increases or reductions in federal spending in accordance with Congressional "pay-as-you-go" rules. Although the amount of revenues foregone as a result of AGOA and GSP are small, the methods that have been used to provide offsets in the past have been somewhat controversial, and similar controversies may resurface. In the case of TAA, the program's costs are far more significant, and identifying an acceptable funding mechanism might be even more challenging.

³ Trade Adjustment Assistance is a federal entitlement program providing training and financial assistance to US workers who claim to have been adversely impacted by foreign trade and meet certain eligibility criteria.

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Despite these obstacles, passage of TPA legislation in 2015 is likely given the current composition of Congress and widespread Republican support for trade initiatives. However, due to the impediments described above, passage of TPA will likely not occur until late May in a best-case scenario. Alternatively, if the above obstacles cannot be overcome, or if other unexpected issues come to occupy the legislative agenda, Congressional approval of TPA might not occur until later in the year, if at all.

III. TIMING AND PROSPECTS FOR CONCLUSION OF TPP NEGOTIATIONS

Whether the TPP negotiations can produce a finalized agreement in time for Congressional consideration in 2015 is largely dependent upon the timing of TPA. Positive developments in recent months suggest that a formal conclusion of the TPP negotiations may be possible by late spring if TPA is enacted by that time.

Most notably, in late January sources indicated that the bilateral market access negotiations between the United States and Japan had achieved a breakthrough, and that the substantive differences between the two countries on agricultural and automotive market access might be close to resolution. Consistent with these reports, Japanese government officials have recently confirmed plans to offer significant market access concessions in TPP, particularly on beef and pork imports. It is now expected that Congressional approval of TPA is the last remaining development needed in order to secure a bilateral agreement between the United States and Japan. As a result, attention is now being focused on resolving other outstanding issues in the TPP, which had largely been placed on hold until the long-awaited US-Japan breakthrough could be reached.

Following the unofficial reports of a US-Japan breakthrough, US Trade Representative Michael Froman informed the Senate Finance Committee that the TPP negotiations might be concluded “in a small number of months.” Such statements are optimistic, however, as a number of sensitive issues in the negotiations remain unresolved. The United States is now pushing to resolve these remaining sensitive issues before or during the upcoming ministerial meeting in mid-March, a deadline which is achievable but highly ambitious given the current state of the negotiations.

The most prominent remaining issue in the TPP negotiations is arguably the United States’ continued insistence that TPP countries adopt a 12-year data protection period for biologic drugs, as is currently required under US law. Despite significant industry support for the proposal, the United States is the only TPP country seeking such an extensive data protection period. Other countries participating in the TPP negotiations currently offer data protection periods ranging from zero to eight years, and the proposed 12-year standard has been the subject of contentious debate.

A second contentious and unresolved issue involves the proposed mechanism that will allow low-income countries to gradually phase-in certain aspects of the agreement’s high intellectual property rights (IPR) protection standards. While TPP parties have agreed that certain aspects of the high IPR protection standards initially will apply only to high-income countries, strong disagreement exists regarding whether an income-based threshold or a time-based phase-in period should be used to determine when low-income countries will be required to enforce the higher standards. Low-income countries have reportedly been reluctant to discuss the transition mechanism before the rest of the IP chapter has been fully negotiated.

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Other significant unresolved issues include the potential exemption of tobacco-related cases from the agreement's investor-state dispute settlement (ISDS) rules, as well as the potential exemptions being sought from the agreement's disciplines on state-owned enterprises (SOEs). US officials have also raised concerns that Canada's market access concessions on dairy and poultry products have been limited. Given that these and potentially other sensitive issues remain unresolved, concluding the TPP negotiations even in principle by the conclusion of the March ministerial meeting is an ambitious goal.

In a best-case scenario, the remaining substantive issues in the TPP negotiations could be resolved in principle by the conclusion of the March ministerial meeting. This outcome would likely result in an immediate and high-profile announcement, but the substance of such an announcement remains unclear. Unless TPA has been enacted before the March ministerial – which is highly unlikely – the Obama Administration will be effectively precluded from announcing a final, signed agreement at that time. Thus, US officials might reveal details of certain key negotiating outcomes to the media, thereby motivating affected domestic interest groups (e.g., agriculture exporters) to lobby Congress for swift passage of TPA in order to secure the announced TPP benefits. The Obama Administration appears to have already employed this strategy in recent weeks to build political support for TPA. For example, shortly after reports indicated that the United States and Japan were nearing an agreement on agricultural market access, industry groups representing US beef, pork and poultry producers voiced support for swift enactment of TPA.

Another possibility would be for the parties to issue a joint announcement stating that a “political agreement” on the substance of the TPP has been achieved, accompanied by a brief description of agreement's contents. In particular, any such document would briefly summarize each chapter of the TPP and highlight the most significant negotiating outcomes. Other TPP parties, such as Canada, have utilized this approach in the past to build momentum for an FTA before the legal text has been finalized. This approach has not yet been utilized by the United States, however. If the remaining substantive issues in the TPP are agreed upon by the conclusion of the March ministerial, finalization and signing of the TPP text could then occur by late spring or early summer – but only if Congress has enacted TPA by that time.

IV. CONGRESSIONAL APPROVAL OF TPP UNDER TPA

If TPA is enacted and a finalized TPP agreement is signed, Congress will then need to approve implementing legislation before the agreement can enter into force, pursuant to the Trade Act of 1974.⁴ If enacted by Congress, implementing legislation would authorize the President to issue a proclamation providing for the TPP to enter into force on a date determined by the executive branch. Congressional approval of implementing legislation for TPP before the end of 2015 is only likely in a best-case scenario, however, despite the expedited procedures required under TPA.

Under TPA, Congressional consideration of the implementing legislation for TPP will occur under a set of expedited legislative procedures known as “fast track” procedures, which are codified in

⁴ P.L. 93-618.

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Sections 151 to 154 of the Trade Act. (The new TPA legislation is not expected to change these timelines.) Even under fast track procedures, however, Congressional consideration of the implementing legislation for TPP could last for up to 90 “in session” days before a final floor vote on the implementing bill must be taken.⁵ Thus, even in a best-case scenario in which the Obama Administration would submit implementing legislation to Congress on June 1, 2015, a Senate floor vote on the legislation would not be required until **January 21, 2016**, based on the current Congressional schedule. This timeframe is explained below, and is based on the assumption that Congress does not further expedite the process by concurrently considering the bill in the House and Senate.

First, after the TPP agreement has been signed, the executive branch will begin drafting the implementing legislation, which will be delivered to Congress on an in session day.⁶ Upon receipt of the implementing bill, identical versions of the bill must be introduced in the House of Representatives and the Senate, where upon introduction they must be jointly referred to the House Ways and Means and Senate Finance Committees.⁷ The implementing bills cannot be amended by either chamber at any point in the process.⁸

Next, the House Ways and Means Committee will have 45 in-session days to report the bill; otherwise, the bill will automatically be discharged and placed on the House calendar.⁹ The House will then have 15 in-session days to vote on the bill, during which debate will be limited to 20 hours and the bill can be approved by a simple majority.¹⁰ If approved, the House bill will then be sent to the Senate.

Once received by the Senate, the Senate Finance Committee will have 15 in session days to report the bill; otherwise, it will automatically be discharged and placed on the Senate calendar.¹¹ As in the House, the Senate will have 15 in session days to hold a floor vote on the bill, during which debate

⁵ P.L. 93-618 Section 151(e)(3) specifies the use of “in session days,” defined as only those days during which the chamber considering the implementing bill is in session. Thus, a period of 90 in session days can take far longer to transpire than an equivalent number of calendar days.

⁶ In advance of submitting the implementing legislation, the President will be required to notify Congress of his intention to enter into an agreement 90 days before the agreement is signed. In addition, the US International Trade Commission will be required to submit a report to Congress and the President assessing the economic impact of the finalized agreement. Neither of these requirements is likely to have a significant impact on the timeline for Congressional approval of implementing legislation, however.

⁷ P.L. 93-618 Section 151(c)(1). The bills may also be referred to other committees of jurisdiction, which are subject to the same time limitations as the House Ways and Means and Senate Finance Committees.

⁸ P.L. 93-618 Section 151(d).

⁹ P.L. 93-618 Section 151(e)(1).

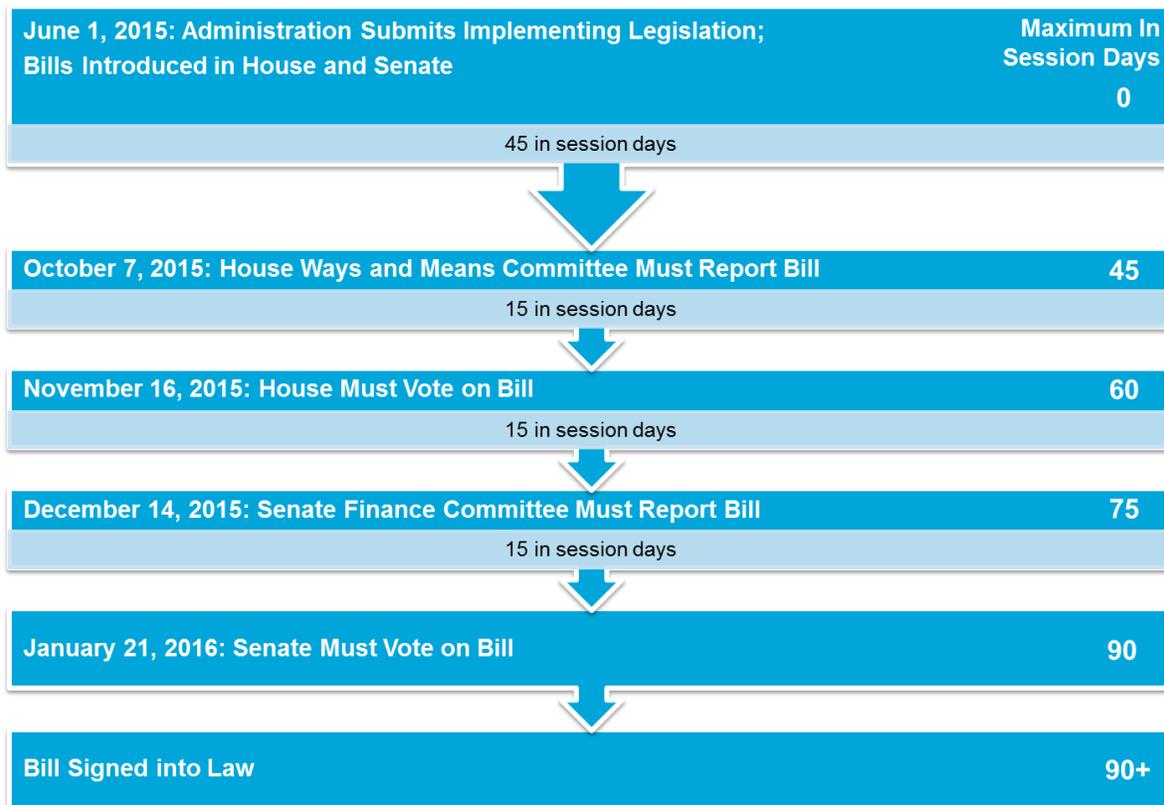
¹⁰ *Ibid.*

¹¹ P.L. 93-618 Section 151(e)(2). Due to the fact that the implementing bill for TPP will be a revenue bill, the Senate will ultimately have to act on the version of the bill passed by the House. As a result, the Senate Finance Committee has until the later of the 45th in session day after the Senate bill is introduced or the 15th in session day after receiving the House bill.

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will also be limited to 20 hours.¹² Finally, if passed by the Senate, the bill will be sent to the President to be signed into law.

Timeline for Congressional Passage of FTA Under TPA, Assuming Submission of Implementing Legislation on June 1, 2015*



*Date estimates are based upon the current House and Senate calendars.

Cumulatively, the entire process from introduction of the implementing legislation to a floor vote in the Senate can take up to 90 in session days assuming that Congress makes full use of its statutorily allotted time. While there are several ways for Congress to accelerate this process, including by concurrently considering the implementing bill in the House and Senate, such actions are not required. More importantly, lawmakers who are skeptical or uncertain about the benefits of TPP will likely be reluctant to consider the bill on an even faster schedule than that which is required by so-called “fast track” procedures. Convincing skeptical lawmakers to move at an even faster pace than fast track procedures require will be extremely challenging.

¹² Ibid.

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Therefore, while Congress is likely to approve the TPP if floor votes take place in mid-autumn, such a timely vote will only be possible if an intense and widespread effort can overcome skepticisms about the fast track process and the substance of the TPP itself. Such efforts would be difficult, even before considering President Obama's dwindling political capital and the spectre of the upcoming Presidential elections. The first Republican Presidential primary debate is scheduled for August of 2015 and will be followed by monthly debates for the remainder of 2015; such events are likely to both overshadow and complicate efforts to approve TPP by the end of the year. Thus, Congressional approval of legislation to implement the TPP in 2015 remains a very-best-case scenario.

Outlook

There exists a narrow window of opportunity for the TPP negotiations to be completed and for a finalized agreement to be approved by Congress in 2015. The timing of Congressional enactment of TPA legislation will be the most significant variable determining whether such an outcome is possible. In a best-case scenario in which Congress is able to enact TPA by late spring of 2015, finalization and signing of a completed TPP agreement will likely occur shortly thereafter, making Congressional approval of implementing legislation possible by mid-autumn. Such a timetable would maximize prospects for Congressional approval of TPP in 2015.

For the reasons described above, however, such an outcome is improbable absent substantial and highly effective cooperation between the White House and Congressional Republicans - longstanding adversaries who possess little experience working together to co-engineer broad legislative compromises. The extent and effectiveness of this cooperation will first be tested in the debate over TPA, which Congress will need to enact by late spring, and again in the debate over an implementing bill for TPP, which will need to receive a floor vote in mid-autumn. Whether the White House and Republican leadership can "thread the needle" by achieving both outcomes within such a limited timeframe appears unlikely but cannot be ruled out.

Finally, even in the event that Congress approves implementing legislation for TPP in the autumn of 2015, the Obama Administration will not be legally bound to issue a proclamation implementing the TPP by any specific date. Rather, the timeline for implementation of the TPP will still be subject to the discretion of the executive branch. In the past, Presidential proclamations to implement FTAs have not been issued until USTR has assured the President that partner countries have made the necessary legislative and regulatory changes to meet their obligations under the FTA, and such conditional implementation may be specified in the TPP itself. Thus, the actual realization of TPP's market access and other benefits could occur long after Congressional approval of the agreement's implementing legislation.

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US General Trade Policy Highlights

US Lawmakers Introduce Legislation Directing Department of Commerce to Investigate Undervalued Currency During CVD Investigations

On February 10, 2015, two bipartisan groups of US lawmakers introduced bills in the Senate and the House of Representatives that would direct the US Department of Commerce (DOC) to consider undervalued currency as a prohibited export subsidy for purposes of US countervailing duty (CVD) investigations. The House and Senate versions of the legislation differ slightly and are similar to previous House and Senate bills introduced in 2010 and 2011, which received bipartisan support but were not enacted. Proponents of the legislation are seeking to have the proposed requirements included in Trade Promotion Authority (TPA) legislation, which is expected to be introduced at the end of February. If such incorporation is rejected by Congressional leaders and the White House, the sponsors would likely push for the legislation to be passed as a stand-alone measure. At this stage, however, it is unlikely that either approach will be successful.

Under U.S. law and WTO rules, a subsidy is defined as a (i) financial contribution (ii) by a government authority (iii) that confers a benefit on the recipient. A subsidy is countervailable where it is specific. The House version of the CVD legislation is titled the *Currency Reform for Fair Trade Act of 2015* (H.R. 820) and was introduced by Reps. Mo Brooks (R-AL), Sander Levin (D-MI), Tim Murphy (R-PA), and Tim Ryan (D-OH). The legislation is similar to a 2010 bill of the same title (H.R. 2378), which passed the House by a vote of 348 to 79 but was not taken up by the Senate. H.R. 820 would amend Title VII of the Tariff Act of 1930 by making the following additions:

- **Definition of “Fundamentally Undervalued Currency”:** Section 2(c) would add requirements to 19 U.S.C. § 1677 specifying that the DOC must determine a country’s currency to be a “fundamentally undervalued currency” if (i) an authority of the country engages in protracted, large-scale intervention in the foreign exchange markets; (ii) the exchange rate of the country is undervalued by at least 5 percent; (iii) the country has experienced significant and persistent global current account surpluses; and (iv) the foreign asset reserves of the country are excessive. Section 2(d) directs the DOC to rely on International Monetary Fund (IMF) guidelines and data when making such determinations.
- **Methodology for Measuring Benefits Conferred:** Section 2(a) would add to 19 U.S.C. § 1677(5)(E) the clarification that a benefit is conferred when the currency of an allegedly subsidizing country is exchanged for foreign currency obtained from export transactions. Section 2(a) would also direct the DOC to measure the benefit conferred under such circumstances as the difference between the amount of currency provided and the amount of currency that would have been provided if the currency of the allegedly subsidizing country were not fundamentally undervalued.
- **Specificity: Contingency on Export Performance:** Section 2(b) would add to 19 U.S.C. § 1677(5A)(B) the clarification that, in the case of a subsidy relating to a fundamentally undervalued currency, the fact that the subsidy may also be provided in circumstances not

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involving export shall not, for that reason alone, mean that the subsidy cannot be considered contingent upon export performance. Proponents of H.R. 820 claim that this clarification is consistent with WTO Dispute Settlement Body rulings, but have not elaborated upon this claim. Under U.S. law (19 U.S.C. § 1677(5A)(A)), export subsidies are *per se* specific.

The Senate version of the legislation is titled the *Currency Undervaluation Investigation Act of 2015* (S. 433) and was introduced by Sens. Sherrod Brown (D-OH), Richard Burr (R-NC), Robert Casey (D-PA), Joe Donnelly (D-IA), Lindsey Graham (R-SC), Rob Portman (R-OH), Charles Schumer (D-NY), Jeff Sessions (R-AL), and Debbie Stabenow (D-MI). S. 433 is similar to provisions of the *Currency Exchange Rate Oversight Act of 2011* (S. 1619), which passed the Senate by a vote of 63 to 35 but was not taken up by the House. S. 433 contains language identical to Section 2(b) of H.R. 820 regarding the export-contingency; other significant provisions of S. 433 would amend Title VII of the Tariff Act of 1930 by making the following additions:

- **Requiring Investigations of Undervalued Currency:** Section 2 would add to 19 U.S.C. § 1671a(c) a provision directing the DOC to investigate whether currency undervaluation by a foreign government provides a countervailable subsidy, if a petition filed by an interested party alleges the elements necessary for the imposition of CVDs and provides the required supporting information.
- **Definition of “Currency Undervaluation Benefit”:** Section 3 would specify, through an addition to 19 U.S.C. § 1677, the acceptable methodology by which the DOC must determine whether a benefit exists as a result of undervalued currency, and prescribes how such benefits must be measured. Similar to H.R. 820, Section 3 directs the DOC to rely on IMF guidelines and data in making such determinations, but details these guidelines more extensively in the legislative text.

Upon introduction of S. 433 and H.R. 820, Congressional aides emphasized that the differences between the two bills are minor and can easily be resolved. The aides also stated that the scope of the new legislation was intentionally limited to CVD investigations “to make the bill simpler in advance of potentially offering it as an amendment to TPA.” If TPA is considered under an open amendment process, adoption of the new currency legislation by amendment is possible, given that similar currency legislation has previously enjoyed bipartisan support. This outcome is unlikely, however, as Senate Finance Committee Chairman Orrin Hatch (R-UT) has stated that he opposes inclusion of the new currency legislation in TPA and the Republican leadership in Congress will also resist such efforts.

Assuming the currency bill is not part of a TPA package, supporters could push for a separate vote on stand-alone legislation. A floor vote on such a bill remains unlikely, but Republican leadership in at least one chamber might allow the vote in exchange for Democratic (and perhaps additional Republican) support for TPA. A compromise of this kind would likely be a “last resort” given the legislation’s controversial substance and opposition from the White House and Republican leadership. Nevertheless, the legislation’s chances of becoming law remain slim, and, even if the bill did become law, it would not necessarily lead to a significant increase in CVD investigations against imports from China and other targeted countries. DOC would retain some discretion to not initiate an investigation based on an allegation of currency undervaluation, and could exercise that

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discretion given the Obama administration's preference to address currency issues through other forums (such as the G-7).

Copies of S. 433 and H.R. 820 are available upon request.

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FREE TRADE AGREEMENTS

Free Trade Agreement Highlights

President Obama Urges Progress on TTIP After Eighth Negotiating Round

On February 9, 2015, President Obama urged US and EU negotiators to make “meaningful progress” in the Transatlantic Trade and Investment Partnership (TTIP) negotiations during 2015. President Obama’s comments came shortly after US and EU negotiators had concluded their eighth formal TTIP negotiating round in Brussels, during which a variety of market access and regulatory issues were discussed. While little tangible progress was reportedly made during the February round, EU negotiators signaled new flexibilities in several areas, which might lay the groundwork for future progress.

During the February round, which was held from February 2 to 6, negotiators discussed outstanding issues in four broad areas as follows:

- **Market Access for Goods:** For the first time in several rounds, TTIP negotiators held detailed discussions on each side’s respective market access offer for goods. The parties had exchanged initial tariff offers in February 2014, but negotiations stalled shortly afterwards when the European Union rejected the US offer as insufficient, even as a basis for future negotiations. However, the European Union dropped this objection during the February round, and agreed to engage in a detailed discussion of the initial tariff offers submitted by each party. This development was welcomed by Assistant US Trade Representative Daniel Mullaney, who said that the parties “need to move quickly to ambitious second tariff offers to achieve our ultimate goal.” US negotiators have said that both parties should submit their second offers in tandem, but EU negotiators have insisted that the United States should be the first to submit a second offer.
- **Market Access for Services:** The parties remained divided over how market access offers for services should be structured, with the European Union continuing its insistence on a “positive list” approach and the United States preferring a more inclusive “negative list” approach. However, the European Union did show new flexibility on market access for financial services. The European Union has long refused to consider tabling an initial offer on market access for financial services due to the US reluctance to incorporate regulatory cooperation on financial services in TTIP. However, the European Union withdrew this condition during the February round, and indicated that it will now consider tabling a market access offer for financial services.
- **Market Access for Procurement:** The two parties continued to disagree on how the present openness of one another’s markets for government procurement should be evaluated. The methodology preferred by the European Union purports to show that approximately 85 percent of

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its public procurement market is open to foreign bids, compared with only 15 percent of the US procurement market, partially due to restrictions maintained by US state governments. However, the US claims that approximately 50 percent of both the US and EU procurement markets are open to foreign bids. Following the February round, the EU's Director of the Directorate-General for Trade Ignacio Bercero stated that the two parties "agreed to further assess the modalities of each other's market." However, neither side appears closer to tabling an initial market access offer for government procurement following the February round.

- **Regulatory Issues:** US and EU officials stated that progress was made during the February round on the issues comprising the so-called "horizontal regulatory cluster," which includes (i) regulatory cooperation; (ii) technical barriers to trade and other standards; and (iii) sanitary and phytosanitary measures. Both parties tabled regulatory cooperation proposals during the February round, marking the first time that proposals from both sides have been tabled in all three horizontal regulatory areas. Director Bercero described this development as an "important milestone," and stated that it would enable negotiators to begin working on the basis of consolidated texts during the next round in an attempt to find common ground. Negotiators also reportedly held productive discussions on a number of sector-specific regulatory issues pertaining to automobiles, chemicals, cosmetics, engineering, medical devices, and pharmaceuticals. However, officials did not disclose details regarding the progress made in these areas.

As expected, negotiators did not discuss the proposed inclusion of an investor-state dispute settlement (ISDS) mechanism in TTIP during the February round. Negotiations on the ISDS mechanism and the investment chapter of TTIP more generally have been suspended since January 2014, when then-EU Trade Commissioner Karel De Gucht announced that the EU would hold public consultations on its draft proposal on investor protections. The public consultations revealed significant opposition to the ISDS mechanism among EU interest groups, and EU negotiators are still revising their proposal on investor protections to take these concerns into account.

Following the February round, Director Bercero announced that the parties would undertake an ambitious work schedule for the remainder of 2015, which will include two formal negotiating rounds to be held by August. Other discussions are also being planned for specific negotiating teams in between the formal rounds, particularly on sector-specific regulatory matters. Despite these initiatives, it remains unlikely that an ambitious TTIP agreement will be reached in the near future, especially given that the US focus on the Trans-Pacific Partnership is likely to persist throughout most of 2015.

United States and Argentina Sign Memorandum of Understanding on Trade Transparency

On February 25, 2015, the United States Ambassador to Argentina Noah Mamet and the Head of Argentina's Federal Tax Administration (*Administración Federal de Ingresos Públicos – AFIP*) Ricardo Echegaray signed a Memorandum of Understanding (MoU) on trade transparency. The MoU establishes a bilateral Trade Transparency Unit (TTU) that will seek to facilitate the detection of trade-based money laundering and fraud.

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The United States-Argentina TTU will exchange trade data for purposes of comparison and analysis. Under the arrangement, the US Department of Homeland Security will provide the AFIP with access to the Data Analysis and Research for Trade Transparency System (DARTTS). The DARTTS contains domestic and foreign trade data and allows users to view both sides of a trade transaction, making the transaction more transparent to authorities. This access is intended to provide both Argentina and the United States with the tools necessary to identify anomalies and financial irregularities indicative of trade-based money laundering, customs fraud, and movement of counterfeit goods.

Ambassador Mamet remarked that the MoU is a critical step in enhancing collaboration between the United States and Argentina to identify perpetrators of trade-based money laundering, customs fraud, movement of counterfeit goods, and other trade-related crimes.

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MULTILATERAL

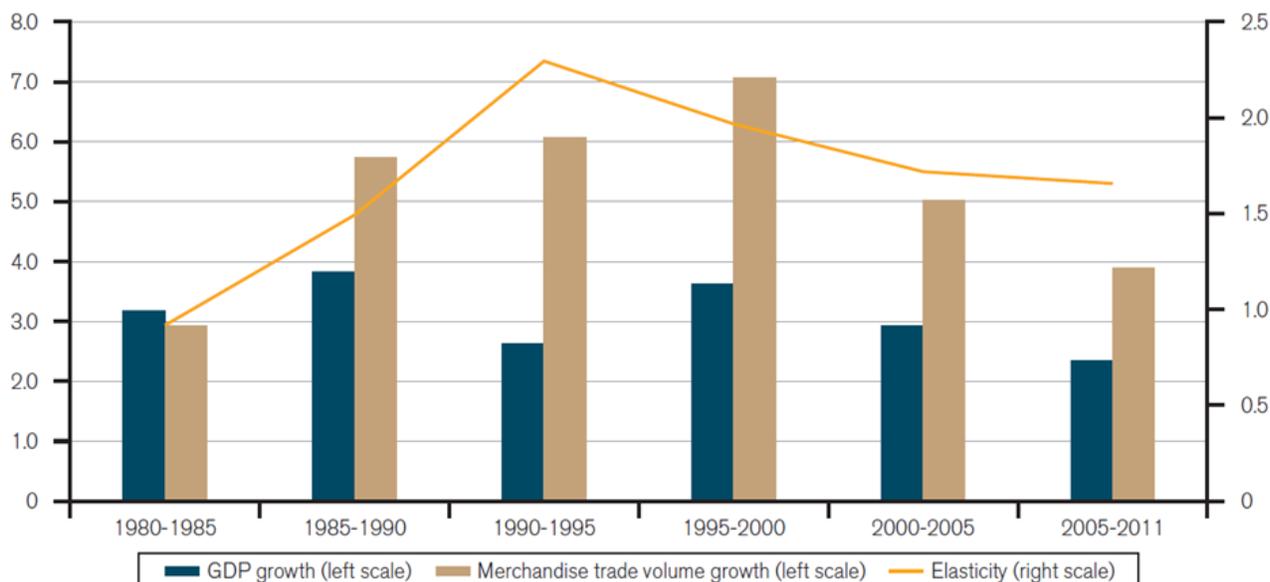
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International Trade Prospects for 2015

What is the prospect that international trade will fuel faster economic growth in 2015? Last fall, the World Trade Organisation (WTO) reduced its forecast of world trade growth for 2015 from 5.3 percent to 4.0 percent. Even that may prove to be optimistic in light of the worsening prospects for GDP growth this year as the world economy struggles to recover from recession. In a recent speech to the US-based Council on Foreign Relations, the International Monetary Fund's (IMF) Managing Director Christine Lagarde stated that despite the boost from cheaper oil and a stronger US economy, growth globally is facing strong headwinds in 2015. Since then, the IMF has downgraded its forecast of global growth this year to 3.5 percent.

There has never been a greater need for trade to pull its weight as a stimulus for growth. Historically, trade has been a leading factor in global economic recoveries. For decades, it outstripped the growth of output, at times by a factor of two; as trade barriers fell, new markets opened up and business reaped productivity gains from the international division of labour. This historical growth in trade is illustrated in the table below:

World merchandise trade volume and real GDP, 1980-2011 (annual average percentage change)



Source: WTO Secretariat.

Note: Merchandise trade refers to the average of exports and imports.

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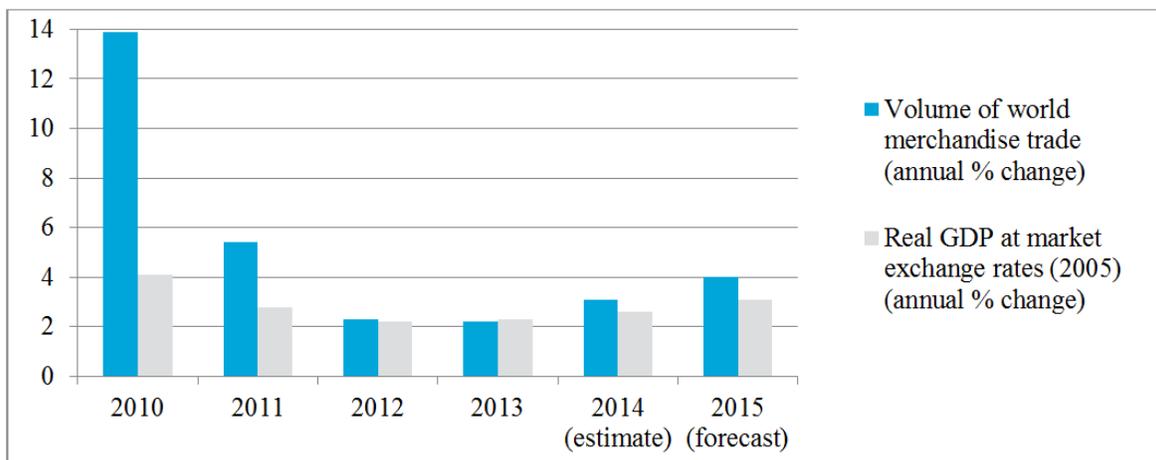
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However, in the past few years the expansion of trade has been unusually weak and it has barely kept pace with GDP growth, as illustrated in the table below:

World merchandise trade volume and real GDP, 2010 – 2015



Source: WTO Secretariat

This weakness in the contribution of trade to economic recovery has several causes. First, cyclical factors are dragging down trade growth globally; Europe and Japan have failed to emerge convincingly from the “Great Recession.” Second, structural factors have altered global trade patterns. In particular, China has matured from being primarily an offshore point of final assembly in the 1990s to a more integrated and self-contained manufacturing centre today that relies less on importing inputs and components. Third, trade policy, while not a dominant cause, is a contributing factor. Although protectionism has failed to materialize on a significant scale, liberalisation is lacking and is failing to promote global economic recovery in any meaningful way.

I. PROTECTIONISM IS NOT THE PROBLEM

Contrary to certain predictions, the financial crisis that began in 2008 and consequent global recession did not provoke a strong protectionist response around the world, even though all of the factors that typically favour protectionism were present, particularly large-scale unemployment. Economic recovery since then has been sub-par and those same factors that can favour protectionism remain in place in many parts of the world, notably in Europe. Yet there is no sign of the wide-scale use of trade restrictions as part of a policy-mix to try to generate faster growth and job creation, with the notable exception of a few countries such as Argentina and Russia. Protectionism with a capital “P”, meaning mainstream political pressure to restrict imports, is not a significant part of the explanation of why trade growth has performed so poorly in recent years.

That said there is no room for complacency. The WTO regularly monitors the imposition of new trade restrictions. It has identified over 2,000 trade-restrictive measures that have been introduced worldwide since the financial crisis in 2008, half of them by the G20 largest economies. About one-half of the measures were trade remedy actions – particularly the initiation of anti-dumping investigations – and a further one-third were increases in import tariffs. The remainder were export restrictions; quantitative restrictions on imports, such as local content requirements; and tighter

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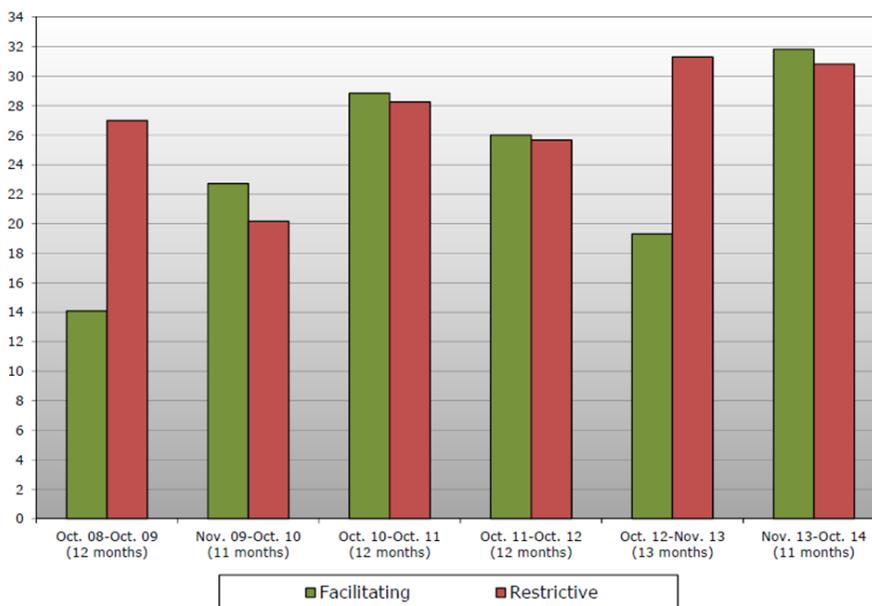
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customs procedures, such as import licensing. About one-quarter of those measures were temporary and have been removed, but the rest are still in place. They are concentrated in certain sectors (iron, steel, and organic chemicals, for example) and on trade from certain destinations, notably China, and they are holding back growth.

Commenting on this in the WTO’s latest monitoring report on *Developments in the International Trading Environment*, published at the end of last year, WTO Director-General Roberto Azevêdo noted that the stock of trade restrictions introduced by WTO Members since 2008 continues to rise: “In a climate of economic uncertainty the continued accumulation of trade-restrictive measures poses a clear risk.” Azevêdo is right. Every act to restrict trade throws more sand into the gears of the world economy and prevents trade from delivering the boost to growth that it traditionally has contributed.

On the other side of the equation, the WTO has also identified almost 1,700 new trade-facilitating measures that its Member governments have taken since 2008, and 2014 was a stellar year in that regard. From November 2013 to October 2014, the WTO reported that new trade-facilitating measures outstripped new trade restrictions both in absolute numbers (350 compared to 339) and in terms of the value of world trade that they affected. New restrictions applied to about US\$258 billion of world trade, while almost US\$1.2 trillion of trade benefited from the termination of trade remedy actions, tariff cuts, and other trade liberalising policy actions.

Trade-facilitating and restrictive measures, including trade-remedies (average per month)



Source: WTO Secretariat.

The WTO’s monitoring exercise does not catch every new trade-restrictive or trade-liberalising measure introduced globally. It admits that its coverage of certain types of non-tariff barriers and behind-the-border measures such as regulations and subsidies is still poor. However, even allowing for a margin of hidden protectionism (with a lowercase “p”, meaning new restrictions targeted at *Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.*

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individual, sensitive products) that the WTO misses in its Member countries, international trade overall does not seem to be significantly more restricted today than it was before the financial crisis. Certain trade flows have become more restricted but others have been liberalized, as the chart above demonstrates, and for the large majority over the past six years there has been no apparent change to the barriers they face on world markets.

The WTO is not a charter for free trade; politically, its Members could never live up to such an ideal. Governments make use of the flexibilities they have under WTO rules to restrict trade in specific circumstances, as they have done throughout the organization's existence. The WTO's surveillance and dispute settlement systems are there to limit abuse and have contributed significant disciplines. WTO rules provide at least part of the explanation of why trade restriction was not viewed as the easy option by governments struggling to deal with the "Great Recession."

The most significant problem with trade policy today is not the threat of protectionism but rather the other side of the coin – slow progress on new trade liberalisation initiatives and, in particular, the WTO's failure to get a concerted trade liberalisation agenda off the ground through the Doha Round. Many WTO Members share the blame for this state of affairs but the concern is that, because of the WTO's consensus negotiating structure, multilateral negotiations can so easily be taken hostage by just a few Members who do not share the same aims of trade liberalisation as the rest. This was illustrated last year by India's especially corrosive blocking actions over the finalization of the WTO's new Trade Facilitation Agreement. Thus, other trade liberalisation initiatives outside the WTO have been taken by small groups of WTO Members and these are showing more promise, in particular negotiations on the Trans-Pacific Partnership (TPP) and the Trade in Services Agreement (TISA).

II. CYCLICAL FACTORS AT PLAY

An important explanation of the global trade slowdown over the past few years has been the failure of some major traders to break out of recession. The European Union (EU), particularly the Euro-area, and Japan have recorded slow growth for several years. The EU alone accounts for almost one-third of global trade when trade between its member states is counted along with its trade with the rest of the world. Since the financial crisis, import demand throughout Europe has been depressed and export performance has been poor, which has weighed heavily on global trade growth. This suggests that there will not be much improvement in trade growth until the EU and Japan sort out their economic policies and start producing output growth again.

There has been speculation that trade friction with the Russian Federation has recently been a primary cause of the EU's export slowdown, but WTO data suggest that this is unlikely. Exports to the Russian Federation account normally for only around 3.5 percent of EU exports. Although these shipments have fallen recently the WTO calculates that they have knocked no more than 0.5 percent off that share. In other words, the EU-Russia trade relationship is not significant enough to have had a serious impact on global trade flows.

More significant has been the impact of weak EU and Japanese import demand on developing countries' exports, by cutting their export volumes and by contributing to falling commodity prices. That, in turn, has weakened developing countries' capacity to import. Large natural resource exporters such as Argentina, Brazil and South Africa recorded weak growth in trade and output last

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year, and the recent collapse in oil prices has brought other countries in Africa, Latin America and the Middle East into the frame in 2015.

Cyclical factors are therefore playing a big part in dampening prospects for trade growth to pick up again in the near future.

III. GLOBAL SUPPLY CHAINS

Analysis by the IMF suggests that future trade growth also has been affected by important structural factors involving two of the world's largest traders, China and the United States. In particular, significant changes in both economies – and in their bilateral trade relationship – have led to a deceleration, and in some cases even outright reversal, in global supply chain-related trade flows.

A remarkable change occurred in the 1990s in the relationship between trade growth and output growth due to the expansion of global supply chains as China integrated into the world economy. China rapidly expanded its manufacturing production and exports based on imports of raw materials, parts and components for domestic processing, particularly from its regional neighbours in Asia and the Pacific. The result was that inputs were being traded, sometimes multiple times, as they passed through various stages of production in different countries before being exported to China for final assembly and from there to consumers around the world. This was captured statistically as a sharp increase in the ratio of trade growth to GDP growth, with a 1 percent increase in global GDP associated in the 1990s with a 2.2 percent increase in world trade.

The IMF analysed this development and concluded that the tendency for trade to grow more than twice as fast as GDP ended around 2000, and that since then the ratio has fallen to 1 to 1.3.¹³ The explanation given by the IMF for the change is that China's international supply chains have matured in the early 2000s as it built up its own manufacturing capability to such an extent that the share of imports of parts and components in its exports fell from around 60 percent in the mid-1990s to where it stands at around 35 percent today.

Mirroring to some extent China's experience, the United States too saw its trade to GDP ratio increase in the 1990s as US firms increasingly off-shored production to China and elsewhere before re-importing the final products. Since then, the IMF finds that the pace of this international fragmentation of production seems to have declined, so that US manufacturing imports as a share of GDP have been stable at about 8 percent since 2000 after nearly doubling over the preceding decade and a half.

Global supply chains remain a potent factor to boost trade growth, but new chains need to be developed. There are opportunities to do that with the right policies in place. There is still great scope for Europe to deepen the division of labour with its main trading partners, possibly towards Eastern Europe but also by bringing in producers in Africa, the Middle East and Latin America which

¹³ "The Global Trade Slowdown: Cyclical or Structural?" Cristina Contantinescu, Aaditya Mattoo and Michele Ruta, IMF Working Paper No. 15/6, January 2015.

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have not so far made the most of their potential to develop durable supply chains with their main markets.

Conclusion

Away from a few bright spots such as the TPP, trade policymakers are shying away from pushing for more liberalisation and deeper integration of the global economy. Trade can be, once again, the champion of economic recovery if governments aggressively implement meaningful trade liberalizing measures and send business a clear signal that it can start investing with confidence in market expansion and developing new supply chains globally. Until then, the world economy seems certain to continue struggling to gain traction and the prospects are that the growth of trade will remain anaemic. It is right that policymakers continue to resist the temptations of protectionism as a way out of current difficulties, but they should not flatter themselves that this is enough. They need to liberalise trade flows too, and the faster and more boldly they do that the better for the world economy.

Multilateral Highlights

China Declines Requests to Expand Coverage of SOEs in GPA Accession Offer

On February 11, 2015, the WTO's Committee on the Government Procurement Agreement (GPA) held an informal meeting to discuss China's most recent revised offer to accede to the GPA. During the meeting, Parties to the GPA ("the Parties") reiterated their dissatisfaction with the coverage of state-owned enterprises (SOEs) under the revised offer, despite acknowledging that the offer represented an improvement over China's previous proposals.

China submitted its most recent revised offer to accede to the GPA in December 2014. In the revised offer, China eliminated previously proposed procurement exclusions related to water, electricity, transportation, energy, and postal services. The revised offer also more than doubled the number of SOEs that China would subject to GPA rules compared with its previous proposals, although a large share of its SOEs would still remain excluded under the revised offer.

Despite welcoming the revised offer as a significant improvement, the initial reaction from the Parties in January 2015 indicated that the proposal still fell short of the threshold levels and coverage being sought under the GPA (threshold levels refer to the minimum value of a procurement contract that can be subject to GPA rules.) The Parties also commented on China's expanded coverage of SOEs in the revised offer, which they deemed to be insufficient. China's request for a three-year transition period to phase in the reduced procurement thresholds was also met with opposition.

These initial reactions were reiterated during the informal February 11 meeting. The United States, the European Union, and several other parties expressed dissatisfaction in particular with the coverage of SOEs in China's latest offer. The Parties also reiterated their dissatisfaction with the transition periods being sought by China to phase-in the reduced procurement thresholds, and with the domestic content requirements that China wishes to continue applying to its procurement

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contracts. Despite these concerns, China refused to consider expanding coverage of its SOEs any further, and asked the Parties to adopt a “practical attitude” to its latest offer. China did propose to continue negotiating with other Parties on its domestic content requirements, but did not state whether it would be prepared to table a sixth revised offer to accede to the GPA.

The next meeting of the GPA Committee will be held in early June and is expected to focus primarily on China’s accession. Given the present state of the negotiations, however, it appears unlikely that China’s accession to the GPA will be completed in the near future.

United States Files Request for WTO Dispute Settlement Consultations with China Over Export Subsidies

On February 11, 2015, the Office of the US Trade Representative (USTR) announced that the United States has filed a new request for World Trade Organization (WTO) dispute settlement consultations with China over alleged Chinese export subsidies. The challenged Chinese program, known as the “Demonstration Bases-Common Service Platform,” allegedly provides prohibited export subsidies to manufacturers and producers in seven different economic sectors. The timing of the request for consultations may have been strategically chosen by the Obama Administration in an effort to influence the ongoing Congressional debate over Trade Promotion Authority (TPA) and the Trans-Pacific Partnership (TPP).

According to USTR, China provides free and discounted services through “Common Service Platforms” as well as cash grants and other incentives to enterprises that meet export performance criteria and are located in export-oriented “Demonstration Bases;” a group of industrial clusters located throughout China. Each of these Demonstration Bases is comprised of enterprises from one of seven sectors: (i) textiles, apparel and footwear; (ii) advanced materials and metals (including specialty steel, titanium and aluminum products); (iii) light industry; (iv) specialty chemicals; (v) medical products; (vi) hardware and building materials; and (vii) agriculture.

In its request for consultations, USTR describes the challenged program as follows:

China designates an industrial cluster of enterprises in a particular industry as a Demonstration Base and then provides export-contingent subsidies to the enterprises located in the Demonstration Base. These subsidies include the provision of discounted or free services through Common Service Platforms or the provision of cash grants. In addition, it appears that China provides certain other export-contingent subsidies to Chinese manufacturers, producers, and farmers.

The United States cites 182 central and sub-central instruments implementing the Demonstration Bases-Common Service Platform programs. The United States claims that these programs are prohibited export subsidies under Article 3.1(a) of the Agreement on Subsidies and Countervailing Measures. Beyond the mention of financial grants and discounted services, the consultations request does not elaborate on the types of subsidies involved.

The timing of the dispute suggests that the Obama Administration could be using the request for consultations to secure Congressional votes for TPA legislation and any future TPP

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agreement. Such a highly publicized dispute against China could help undecided members of Congress to justify votes in favor of the President's trade agenda, by providing a current example of US efforts to combat prohibited trade practices. Several members of Congress were quoted as expressing support for the request for consultations in a USTR press release issued on February 11.

The Obama Administration has pursued a similar strategy in the past; for example, filing a request for consultations over Chinese wind power subsidies (DS419) in late 2010 as Congressional debate over free trade agreements with Korea, Colombia and Panama intensified. That dispute did not proceed to the Panel stage, and it is possible that the new dispute over China's export subsidies could have a similar result if TPA and TPP are approved by Congress before panel proceedings are begun.

Click [here](#) for a copy of the USTR press release and [here](#) for a copy of the consultation request.

Environmental Goods Agreement Negotiators Seek to Finalize Product List in March

During the week of March 16, 2015, Parties to the WTO's Environmental Goods Agreement (EGA) ("the Parties") will hold negotiations in Geneva with the aim of finalizing the list of products proposed for tariff elimination under the EGA by the end of March. Although the EGA negotiations have recently shown progress, China has yet to submit its list of product nominations, and controversy has arisen over the environmental credentials of certain goods that have been nominated by other Parties for inclusion. These obstacles may limit the outcomes that can be achieved by the EGA negotiations in 2015.

During the most recent EGA negotiating round held in January, negotiators reviewed the list of goods proposed to be covered in the categories of renewable energies and energy efficiency, and shared views on how far they would be able to go in eliminating tariffs on those goods. The round concluded on January 30, with an agreement that the Parties would seek to complete the initial tabling of proposals for tariff elimination on all ten agreed-upon categories of environmental goods by March 31. The proposals that are to be tabled are based on a preliminary list of 400 individual environmental goods that have been nominated for coverage under the EGA, mostly by the United States and the European Union.

The United States, the European Union, Japan, Canada, South Korea, Australia, New Zealand, and Switzerland have already tabled their proposals, with each covering a large proportion of the full list. However, China has yet to table any proposals because it is still undertaking domestic consultations, which could potentially delay finalization of the initial EGA product list beyond the March 31 target date. China's participation is considered essential for the Parties to conclude that there is a "critical mass" of participants in the agreement, such that they would be willing to bring the EGA into the WTO and have it apply on a most-favoured-nation basis to all WTO Members.

In addition, controversy has recently arisen among the Parties over the inclusion of goods related to nuclear power and agricultural biofuels, such as biodiesel and methanol. In both cases, some of the Parties have questioned the "environmental credentials" of these products and their justification for

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being included in the negotiations. The EU is the strongest proponent for including these items in the EGA list of products on which tariffs are to be eliminated. However, nuclear power is controversial among the general public in some other EGA Parties, who are reluctant to consider nuclear power as environmentally friendly. In addition, some Parties have objected to the inclusion of biofuels on the grounds that they are agricultural rather than industrial products, that their net environmental benefits depend greatly upon how they are produced, and that they are heavily subsidized in some countries, making for unfair conditions of competition with other energy sources.

During the next round of EGA negotiations in March, the Parties will discuss product nominations for the final three of the ten product categories that they have agreed will be covered: (i) environmental monitoring, analysis and assessment; (ii) environmentally preferable products; and (iii) resource efficiency. The goal is to compile all proposals for inclusion in the EGA product list by the end of March and begin negotiations in April on removing products from the list until there is agreement on what will be covered by the EGA.

The United States is seeking a tangible outcome from the EGA negotiations by the end of this year to coincide with the UN Climate Change Conference in Paris, which will be held from November 30 to December 11. However, it is not yet clear whether that outcome might be the conclusion of the entire EGA or a more incremental form of progress, such as an agreement on product coverage.

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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