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Trade Negotiations During the 110th Congress

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Summary

The Bush Administration has made bilateral and regional free-trade agreements (FTAs) an important element of U.S. trade policy, a strategy known as "competitive liberalization." This strategy, it argues, will push forward trade liberalization simultaneously on bilateral, regional, and multilateral fronts. It is meant to spur trade negotiations by liberalizing trade with countries willing to join FTAs, and to pressure other countries to negotiate multilaterally. Critics contend, however, that the accent on regional and bilateral negotiations undermines the multilateral forum and increases the risk of trade diversion away from competitive countries not in the trade bloc. On May 10, 2007, Congressional leaders and the Bush Administration announced a conceptual agreement on changes to currently notified free trade agreements (FTA).

Negotiations have been concluded with Peru, Colombia, Panama, and South Korea in time to be considered by Congress under U.S. trade promotion authority. Legislation to implement the Peru FTA was approved by Congress and signed into law by the President on December 14, 2007 (P.L. 110-138). Legislation to implement the Colombia FTA was introduced in each chamber under TPA rules on April 8, 2008 (H.R. 5724, S. 2830). On April 10, the House voted to suspend TPA rules with regard to this agreement (H.Res. 1092). Several other trade initiatives are under discussion, including a U.S.-Middle East FTA and an FTA with countries in Association of South East Asian Nations (ASEAN) bloc. Legislation to implement the Central American-Dominican Republic Free Trade Agreement (CAFTA-DR) and FTAs with Bahrain and Oman were approved by the 109th Congress.

The broadest trade initiative being negotiated is the Doha Round of multilateral trade negotiations in the World Trade Organization (WTO). In November 2001, trade ministers from WTO member countries agreed to launch a new round of trade talks covering market access, trade remedies, and developing-country issues. After fruitless meetings to attempt to resolve differences between the major parties in July 2006, the negotiations were "suspended" indefinitely. Although talks have now resumed, major disagreements persist. Another regional initiative is the Free Trade Area of the Americas (FTAA).

U.S. trade promotion authority (TPA) expired on July 1, 2007. Potential agreements resulting from current trade negotiations (Colombia, Panama, and South Korea) may be considered by Congress under TPA legislation enacted in 2002. Under the legislation, if the President meets notification requirements and other conditions, Congress will consider a bill to implement a trade agreement under an expedited procedure (no amendment, deadlines for votes). The notification requirements include minimum 90-day notices before starting negotiations and before signing a trade agreement. However, TPA governs internal rules of each chamber and may be altered by each chamber at any time.

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Most Recent Developments

April 10, 2008: The House passed a rule (H.Res. 1092) to suspend trade promotion authority procedures governing the consideration of legislation implementing the U.S.-Colombia FTA by a vote of 224-195.

April 8, 2008: Legislation implementing the U.S.- Colombia FTA was introduced in the House (H.R. 5724) and the Senate (S. 2830).

February 8, 2008: WTO Agriculture and Non-Agricultural Market Access negotiating group chairman released revised negotiating texts.

January 14-18, 2008: The United States and Malaysia held negotiations on a free trade agreement (FTA) in Kuala Lumpur.

December 14, 2007: President Bush signed legislation implementing the Peru FTA (P.L. 110-138). The Senate approved the legislation by a vote of 77-18 on December 4, and the House of Representatives approved it by a vote of 285-132 on November 10.

Introduction

For over 50 years, U.S. trade officials have negotiated multilateral trade agreements to achieve lower trade barriers and rules to cover international trade. During the 108th Congress, U.S. officials negotiated and Congress approved four bilateral free-trade agreements with Australia, Chile, Morocco, and Singapore.[1] In the 109th Congress agreements were concluded and Congress approved the Central American-Dominican Republic FTA and bilateral agreements with Bahrain and Oman. The Bush Administration is making bilateral and regional free-trade agreements more important elements of its trade policy. The multilateral arena is no

[1] The United States also is a party to four previous negotiated agreements: the U.S.-Israel Free Trade Agreement (effective 1985), the Canada-U.S. Free Trade Agreement (effective 1989), the North American Free Trade Agreement (effective 1994), and the U.S.-Jordan Free Trade Agreement (effective 2001).

longer the only means, or perhaps even the principal means, by which the United States is pursuing liberalized trade.[2]

Trade agreements are negotiated by the executive branch, although Congress has the ultimate Constitutional authority to regulate interstate and foreign commerce. Trade promotion authority (TPA) requires that the President consult with and advise Congress throughout the negotiating process. After the executive branch signs an agreement, Congress may consider implementing legislation if any statutory changes are required under the agreement. There is no deadline for submission of the legislation, but once a bill is submitted, TPA requires a final vote within 90 legislative days.

U.S. Negotiating Strategy

U.S. negotiating strategy is based on a concept known as "competitive liberalization." As explained by the Administration, this strategy is designed to push forward trade liberalization on multiple fronts: bilateral, regional, and multilateral. It is meant to further trade negotiations by liberalizing trade with countries willing to join free trade agreements, and to put pressure on other countries to negotiate in the WTO. According to former United States Trade Representative (USTR) Robert B. Zoellick,

> we want to strengthen the hand of the coalition pressing for freer trade. It would be fatal to give the initiative to naysayers abroad and protectionists at home. As we have seen in the League of Nations, the UN, the IMF and the World Bank, international organizations need leaders to prod them into action.[3]

Critics assert that the emphasis on regional and bilateral negotiations undermines the World Trade Organization (WTO) and increases the risk of trade diversion. Trade diversion occurs when the existence of lower tariffs under a trade agreement cause trade to be diverted away from a more efficient producer outside the trading bloc to a producer inside the bloc. What also results from the plethora of negotiated FTAs, according to one economist, "is a 'spaghetti bowl' of rules, arbitrary definitions of which products come from where, and a multiplicity of tariffs depending on source."[4] More recently, new USTR Susan Schwab described the negotiation of bilateral and regional FTAs as a way to "establish the breadth and scope of potential multilateral agreements in years to come by setting precedents and by demonstrating the real benefits of free and fair trade."[5]

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[2] For further information, see CRS Report RL31356, *Free Trade Agreements: Impact on U.S. Trade and Implications for U.S. Trade Policy*, by William H. Cooper.

[3] Robert B. Zoellick, "Unleashing the Trade Winds," *The Economist*, December 7, 2002, p. 29.

[4] Jagdish Bhagwati and Arvind Panagariya, "Bilateral Trade Treaties Are a Sham," *Financial Times*, July 14, 2003.

[5] "Opening Statement of Deputy U.S. Trade Representative Susan C. Schwab, U.S. Trade (continued...)

The manner in which the Administration chooses potential FTA partners has been the subject of scrutiny by some Members of Congress. Traditionally, regional and bilateral trade agreements have been negotiated for a mixture of economic, political, and development reasons. The U.S.-Canada Free-Trade Agreement (FTA) was primarily economic in nature: recognizing the largest bilateral trade relationship in the world between two countries at a similar stage of development. The partnership with Mexico to create NAFTA brought in a country at a different stage of development and gave attention to trade as a lever to encourage economic advancement. It also had a geopolitical rationale of encouraging stability in the U.S. neighbor to the south. The FTA with Israel was seen by supporters as an affirmation of U.S. support for the Jewish state, while the FTA with Jordan could be seen as a reward for Jordan's cooperation in the Middle East peace process.

In May 2003, then-USTR Zoellick enumerated several factors used to evaluate countries seeking to negotiate trade agreements with the United States, but he said there were no formal rules or procedures to make the determination.[6] A GAO study released in January 2004 reported that an interagency process had been established to assess FTA partners using six factors. These factors include a country's readiness in terms of trade capabilities, the maturity of its political and legal system, and the will to implement reforms; the economic benefit to the United States; the country's support of U.S. trade liberalization goals; a partner's compatibility with U.S. foreign and economic policy interests; congressional or private sector support; and U.S. government resource constraints.[7] The ability of the United States to attract future FTA negotiating partners may now depend on the reauthorization of trade promotion authority, which lapsed on July 1, 2007.

Some Members of Congress have questioned the manner in which potential FTA partners are chosen. Senator Baucus, now Chairman of the Senate Finance Committee, criticized the Administration for overlooking high volume trading partners in Asia and was quoted saying that "this Administration's trade policy is dictated largely by its foreign policy, not by economics."[8] In addition, some business

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[5] (...continued)
Representative-Designate," Senate Finance Committee, May 16, 2006.

[6] These considerations included cooperation with the United States in its foreign and security policies; country support for U.S. positions in the Free-Trade Area of the Americas (FTAA) and the WTO; the ability of a trade agreement to spur internal economic or political reform in the target country or region; the ability to counteract FTAs among other countries or trading blocs that disadvantage American firms; the presence of congressional interest or opposition to an FTA; support among U.S. business and agricultural interests; the ability of a country to anchor broader trade agreements to spur regional integration; the willingness of a partner to negotiate a comprehensive agreement covering all economic sectors; and the capacity constraints of the Office of the USTR. "Following the Bilateral Route?," *Washington Trade Daily*, May 9, 2003; "Zoellick Says FTA Candidates Must Support U.S. Foreign Policy," *Inside U.S. Trade*, May 16, 2003.

[7] GAO Report 04-233, *International Trade: Intensifying Free Trade Negotiating Agenda Calls for Better Allocation of Staff and Resources*, January 2004, pp. 9-10, 12.

[8] "Baucus Proposes FTAs in Asia to Offset Chinese Influence," *Inside U.S. Trade*, (continued...)

groups have expressed a desire to concentrate more on the multilateral negotiations of the WTO, which potentially could yield greater commercial gains.[9]

The Administration cites the negotiation of free trade agreements in multilateral, regional, and bilateral settings as an integral part of its strategy to enhance prosperity and freedom for the rest of the world. In its September 2002 National Security Strategy, the Administration seemed to equate the concept of 'free trade' with a basic freedom or moral principle, "the freedom for a person or a nation to make a living." According to this document, free-market economic and trade policies, more than development assistance, provides nations with the ability to lift themselves out of poverty and to ensure stability.[10]

Although the Administration is pursuing trade agreements on multiple fronts, some critics question whether the United States should be negotiating trade agreements at all. They contend that American jobs are lost because of cheaper imports, and that relocation of U.S. production to other countries has been facilitated by trade agreements. Some argue that trade agreements do not adequately address the problem of countries with lower labor and environmental standards that are able to produce at lower cost. Some critics believe that the U.S. economy will be harmed by the Administration's pursuit of free-trade agreements.

With party control switching in the 110th Congress, Democratic leaders have sought to make changes in U.S. trade negotiating strategy. On March 27, 2007, House Ways and Means Committee Chairman Rangel and Trade Subcommittee Chairman Levin unveiled a set of Democratic trade principles, including some that likely will require, if implemented, the modification of the currently notified FTAs with Colombia, Panama, Peru, and South Korea. After several weeks of negotiations, congressional leaders and the Bush Administration announced a conceptual agreement on May 10 on several issues that may clear the way for consideration of the Peru and Panama agreements.

The conceptual template[11] provides for enforcement of international labor standards in an FTA partner's domestic laws and regulations, adherence of FTA partners to certain multilateral environmental agreements, an assurance that trade agreements accord "no greater substantive rights" to foreign investors in the United States than U.S. investors in the United States, a clarification that each agreement's

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[8] (...continued)
December 10, 2004.

[9] "Filling Up with Appetizers," *Congress Daily AM*, June 11, 2003.

[10] National Security Council, *National Security Strategy of the United States*, September 2002, [http://www.whitehouse.gov/nsc/nss.pdf], pp. 17-21.

[11] House Ways and Means Committee, "Peru and Panama FTA Changes," available online at [http://waysandmeans.house.gov/Media/pdf/110/05%2014%2007/05%2014%2007.pdf]; Office of U.S. Trade Representative, "Bipartisan Agreement on Trade Policy," at [http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2007/asset_upload_file127_11319.pdf].

"essential security" provision is not subject to challenge, insurance that government procurement policies promote basic worker's rights, and the incorporation of certain flexibilities concerning test data and the approval of pharmaceutical products in developing countries.

The result of the competitive liberalization strategy is that the United States has been involved in an unprecedented number of trade negotiations during this Administration. The United States has concluded agreements with Peru, Colombia, Panama, and South Korea. Legislation to implement these agreement likely will be considered by the 110th Congress under the timetable set forth by trade promotion authority (see Table 1). During the 109th Congress, the United States ratified FTAs with Bahrain, Oman, and a combined FTA with the Dominican Republic and the countries of the Central American Common Market (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua). Implementing legislation for these agreements has been passed by the United States, but the agreements have not yet entered into force with Oman or Costa Rica.

Table 1. Free Trade Agreements Approved by Congress Under Current Trade Promotion Authority

Country	Public Law/Vote	Implementation Status
Chile	P.L. 108-77 (9/3/03) House: 270-156 (7/24/03) Senate 65-32 (7/31/03)	In Force: (1/1/04)
Singapore	P.L. 108-78 (9/3/03) House: 272-155 (7/24/03) Senate: 66-32 (7/31/03)	In Force: (1/1/04)
Australia	P.L. 108-286 (8/3/2004) House: 314-109 (7/14/04) Senate: 80-16 (7/15/04)	In Force: (1/1/05)
Morocco	P.L. 108-302 (8/17/04) House: 323-99 (7/22/06) Senate: UC* (7/22/06)	In Force: (1/1/06)
CAFTA-DR -El Salvador -Honduras -Nicaragua -Guatemala -Costa Rica -Dominican Republic	P.L. 109-53 (8/2/05) House: 217-215 (7/28/05) Senate: 55-45 (7/28/05)	 In Force: (3/1/06) In Force: (4/1/06) In Force: (4/1/06) In Force: (7/1/06) Pending: CR referendum approved (10/07/07) In Force: (3/1/2007)
Bahrain	P.L. 109-169 (1/13/06) House: 327-95 (12/7/05) Senate: UC (12/13/05)	In Force: (8/1/06)
Oman	P.L. 109-283 (9/26/06) House: 221-205 (7/20/06) Senate: 62-32 (9/19/06)	Pending

Country	Public Law/Vote	Implementation Status
Peru	P.L. 110-138 (12/14/07) House 285-132 (11/9/07) Senate 77-18 (12/4/07)	Pending

Source: Congressional Research Service
* UC- unanimous consent

TPA Notification and Consultation Requirements

Later sections of this report refer to formal notifications by the Administration to Congress. Under trade promotion authority (TPA) legislation passed in 2002 (Title XXI, P.L. 107-210), the President must notify Congress before starting negotiation of a trade agreement and before signing a completed agreement. TPA legislation applies to trade agreements entered into before July 1, 2007. If the Administration meets the notification requirements, consults as required, and satisfies other conditions in the TPA legislation, the 2002 legislation calls on Congress to consider implementing legislation for a trade agreement under expedited ("trade promotion" or "fast-track") procedures.[12] The following briefly reviews the notification and consultation requirements.

Before the Start of Negotiations. Before starting negotiations, the Administration must notify Congress at least 90 calendar days in advance. (This requirement was waived for certain negotiations that were underway before enactment of the TPA legislation.) Before and after submitting this notice, the Administration must consult with the relevant congressional committees and the Congressional Oversight Group (COG).[13] The Administration must comply with certain additional consultation and assessment requirements for agricultural, textile and apparel, and fish and shellfish negotiations.

During Negotiations. In the course of negotiations, the USTR must consult closely and on a timely basis with the COG and all committees of jurisdiction. Guidelines developed by the USTR, in consultation with the House Ways and Means Committee and the Senate Finance Committee (the revenue committees), cover briefings of the COG, access by COG members and staff to documents, and coordination between the USTR and the COG at critical periods of the negotiations.

Before Signing the Agreement. At least 180 calendar days before signing a trade agreement, the President must report to the revenue committees on proposals that might require amendments to U.S. trade remedy laws. At least 90 calendar days

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[12] For further information, see CRS Report RL33743, *Trade Promotion Authority (TPA): Issues, Options, and Prospects for Renewal*, by J. F. Hornbeck and William H. Cooper.

[13] Members of the COG are the chairman and ranking member of the House Ways and Means Committee and the Senate Finance Committee, three other members from each of those committees (no more than two from the same party), and the chairman and ranking member from any other committees with jurisdiction. COG members are official advisers to the U.S. delegation in trade negotiations. They consult with and provide advice to the USTR on the formulation of objectives, negotiating strategies, and other trade matters.

before entering into a trade agreement, the President must notify Congress of the intention to enter into the agreement. No later than 30 days after this notification, private sector advisory committees must submit reports on the trade agreement to Congress, the President, and the USTR. Also at least 90 calendar days before entering into a trade agreement, the President must provide the International Trade Commission (ITC) with the details of the trade agreement and request an assessment.

The USTR must consult closely and on a timely basis (including immediately before initialing an agreement) with the revenue committees, the COG, and other congressional advisers, and with the agriculture committees when an agreement relates to agricultural trade.

Entering Into the Agreement. Within 60 days of entering into the agreement, the President must submit a list of required changes to U.S. law that likely would be necessary to bring the United States into compliance with the agreement. Not later than 90 calendar days after the President enters into an agreement, the ITC must report to the President and to Congress on the likely impact of the agreement on the U.S. economy and on specific industrial sectors.

There is no deadline for submission of an implementing bill. However, once the President send a draft implementing bill (with the final text of the agreement and supporting materials), it is introduced and referred to the House Ways and Means Committee and Senate Finance Committee. Each committee has 45 days to report the legislation or it is discharged to the full chamber. As implementing legislation likely will have revenue provisions (and thus must originate in the House), the Senate committee may alternatively consider the House-passed legislation within 15 days of receiving it from the House. After the legislation is reported (or discharged), each chamber has 15 days to vote the legislation up or down with no amendments and 20 hours of debate. Thus, after introduction Congress has a maximum of 90 legislative days to consider the implementing bill, although the process may be shortened if the two chambers act concurrently.[14]

Agreements Reached

Colombia. Negotiations with Colombia started as a regional agreement with the countries of the Andean Community, but subsequently pursued separate tracks.[15] The United States signed a deal with Colombia on February 27, 2006; President Bush notified Congress of his intent to enter into an agreement with Colombia on August 24 and the agreement was signed on November 22, 2006. Colombia was the 30th largest trading partner of the United States in 2007 with bilateral trade totaling $17.1 billion ($7.2 billion in exports and $9.9 billion in imports). Leading U.S. imports include petroleum, coffee, spices, apparel, cut flowers, gold, and precious and semi-

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[14] See CRS Report RL33743, *Trade Promotion Authority (TPA): Issues, Options, and Prospects for Renewal*, by J. F. Hornbeck and William H. Cooper, Appendices A and B for a detailed time line for this process.

[15] For further information, see CRS Report RS22419, *The U.S. Colombian Trade Promotion Agreement*, by M. Angeles Villarreal.

precious stones. Prominent U.S. exports to Colombia are heavy construction and drilling equipment, chemicals, cellular and line telephony equipment, plastics, and cereal grains. As with Peru, many of Colombia's exports to the United States enter duty free under the Andean Trade Promotion and Drug Eradication Act (ATPDEA) (P.L. 107-210), which was recently extended to February 29, 2007, and the GSP.

The recent trade policy template, discussed above, calls for the inclusion of its provisions to the Colombia agreement. However, a letter informing Ambassador Schwab of the Agreement from Chairmen Rangel and Levin to USTR Schwab highlighted the need to address "systemic and persistent violence against trade unionists and other human rights defenders" in Colombia.[16] On June 29, 2007, House Democratic leaders, citing the necessity of "sustained results on the ground" against such violence, announced that they would not support the Colombia FTA "at this time."[17] On April 8, 2008, the President sent legislation implementing the U.S.-Colombia FTA (H.R. 5724, S. 2830) to Congress under trade promotion authority. Two days later, the House adopted a rule (H.Res. 1092) to suspend TPA rules governing consideration of H.R. 5724 by a vote of 224-195.

Panama. During a hemispheric trade summit in Miami on November 18, 2003, then-USTR Zoellick announced that the Administration had formally notified Congress of its intent to begin negotiations for an FTA with Panama.[18] Those bilateral negotiations formally began on April 25, 2004, in Panama City, Panama. In announcing the proposed FTA, the USTR cited Panama's return to democracy, its position as a regional financial and commercial center, and its assistance with counternarcotics, anti-terrorism, and anti-money laundering efforts. However, the negotiations stalled primarily over agriculture and government procurement issues, and were further delayed in the run-up to an October 2006 referendum on enlarging the Panama Canal. On December 19, 2006, USTR announced the completion of negotiations, subject to further discussions on labor issues.[19] President Bush notified Congress of his intention to sign the agreement on March 30, 2007. However, the labor and environmental provisions of the Panama agreement were left open pending agreement with Congress. The trade policy template agreed upon by congressional leaders and the Administration on May 10 was incorporated into the agreement, and Panama signed the agreement on June 28, 2007. The Panamanian National Assembly ratified the accord on July 11, 2007.

Consideration of the agreement by Congress has been complicated by the September 1, 2007, election of Pedro Miguel Gonzales as President of Panama's National Assembly. He is wanted by U.S. authorities in connection with the murder

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[16] House Ways and Means Committee, "Peru and Panama FTA Changes," at [http://waysandmeans.house.gov/Media/pdf/110/05%2014%2007/05%2014%2007.pdf]

[17] "Pelosi, Hoyer, Rangel, and Levin Statement on Trade," press release June 29, 2007.

[18] For further information, see CRS Report RL32540, *The Proposed U.S.-Panama Free Trade Agreement*, by J. F. Hornbeck.

[19] "Free Trade with Panama: A Summary of the Agreement," December 19, 2006, at [http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2006/asset_upload_file564_10234.pdf].

of a U.S. soldier in Panama City in 1992. On September 25, Ways and Means Chairman Rangel reportedly referred to the Gonzales issue as an "800-pound gorilla with Panama right in the middle of the living room.... This guy murdered a U.S. soldier. It kind of makes labor and worker rights look kind of small."[20]

Panama was the 62nd largest trading partner of the United States in 2007 with total trade of $3.9 billion. U.S. imports of $361 million were led by shrimp, fresh fish, precious or semi-precious metals, refined petroleum, and sugar. U.S. exports in 2007 totaled $3.5 billion and were comprised of refined petroleum, aircraft, medicaments, corn, computer parts and accessories and telecommunications equipment. Many Panamanian goods enter duty-free through the Caribbean Basin Initiative and the GSP.

South Korea. The Administration notified Congress on February 3, 2006, of its intent to begin FTA negotiations with South Korea.[21] After eight formal rounds of negotiation, and nearly round-the-clock sessions at the end March 2007, the United States and South Korea concluded an FTA on April 1.[22] The Administration simultaneously notified Congress of its intention to enter into this agreement. South Korea is the seventh largest trading partner of the United States with two-way trade totaling $78.4 billion in 2007 — $33.0 billion in exports and $45.4 billion in imports. Motor vehicles, computers and computer equipment, and consumer electronics are major import categories; major U.S. exports include electrical and industrial machinery, aviation, chemicals, and aircraft.

To achieve the agreement, negotiators resolved several thorny issues of agriculture, auto tariffs, intellectual property rights, services trade, and the Kaesong industrial complex. Tariffs on beef will be removed over a 15-year period, but the agreement does not address the health restrictions imposed on U.S. beef. However, Members of Congress have indicated that the FTA will not be considered until the beef ban is lifted.[23] Korea will not provide additional access for rice, but other U.S. agricultural exports will either become duty free immediately or tariffs will be phased out over a 10-year period. Both sides will remove their auto and light truck tariffs, immediately or over time, and Korea agreed to remove its engine-displacement tax. However, no guaranteed market access for U.S. autos was provided in the agreement, as was sought by some Members of Congress. In other areas, products from the Kaesong industrial complex in North Korea are not covered by the agreement, and South Korea agreed to adopt strengthened laws concerning intellectual property rights, especially patent and data protection for U.S. pharmaceuticals. In addition,

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[20] "House Ways and Means Committee Backs Draft Legislation on Peru FTA by Voice Vote," *International Trade Reporter*, September 27, 2007.

[21] For further information, see CRS Report RL33435, *The Proposed South Korea-U.S. Free Trade Agreement (KORUSFTA)*, by William H. Cooper and Mark E. Manyin.

[22] Free Trade with Korea: A Brief Summary of the Agreement, at [http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2007/asset_upload_file355_11035.pdf].

[23] For example, see press release of Senator Max Baucus, April 2, 2007, at [http://finance.senate.gov/press/Bpress/2007press/prb040207a.pdf].

South Korea accepted liberalization of certain service sectors including financial services, legal services, and U.S. ownership of telecommunications companies. The House version of the trade policy template agreed on May 10 contained a note indicating that Korea's "systematic barriers" to trade in automotive, manufactures, agriculture, and services "will have to be addressed."[24] On June 29, 2007, the House Democratic leadership announced that it "cannot support the Korean FTA as currently negotiated."[25]

Agreements Under Negotiation

The WTO Doha Round

At the fourth Ministerial meeting of the World Trade Organization (WTO) in Doha, Qatar, on November 9-14, 2001, trade ministers from over 140 member countries of the World Trade Organization agreed to launch a new round of multilateral trade negotiations.[26] The negotiations became known as the Doha Development Agenda, because of the possibility of increased participation of developing-country members, which now account for about four-fifths of the WTO members.

The work program combined ongoing negotiations on agriculture and services liberalization with new negotiations on trade barriers for industrial products, WTO rules on dumping and subsidies, several topics that developing countries had sought such as easier access to medicines under the existing WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and so-called "Singapore issues" (investment, competition, transparency in government procurement, and trade facilitation).

On August 1, 2004, negotiators in Geneva reached agreement on a framework for the conduct of future negotiations.[27] This framework had been the goal of the unsuccessful fifth Ministerial, held in Cancun, Mexico, in September 2003. The framework provides a blueprint for future negotiations on agriculture, non-agricultural market access (NAMA), and services. Ministers also agreed to begin negotiations on trade facilitation, but the other so-called Singapore issues of government procurement, investment, and trade and competition policy were dropped from the Doha round negotiations. Members acknowledged that the December 31,

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[24] House Ways and Means Committee, "Peru and Panama FTA Changes," see note p. 1, at [http://waysandmeans.house.gov/Media/pdf/110/05%2014%2007/05%2014%2007.pdf].

[25] "Pelosi, Hoyer, Rangel, and Levin Statement on Trade," press release June 29, 2007.

[26] For further information, see CRS Report RL32060, *World Trade Organization Negotiations: The Doha Development Agenda*, by Ian F. Fergusson.

[27] For more information, see CRS Report RL32645. *The Doha Development Agenda: The WTO Framework Agreement*, coordinated by Ian F. Fergusson, and CRS Report RS21905, *The Agricultural Framework Agreement in the Doha Round Negotiations,* by Charles Hanrahan.

2004, deadline for completion of the round would not be met, and the framework set no new deadline.

The deadline for submitting an agreement to be considered under TPA has now passed. For an agreement to be considered under TPA, Congress must have been notified by April 2, 2007. At this point, the parties likely will seek to achieve some measure of progress in the negotiations in the hope that the 110th Congress may renew or extend TPA. However, the House leadership announced that their "legislative priorities do not include the renewal of fast-track (i.e., TPA) authority" on June 29, 2007.[28] Following agreement on any negotiating modalities, countries must apply the formulas adopted, including any flexibilities, to their tariff schedules, must verify the schedule of concessions of other countries, and engage in bilateral negotiations over those schedules. This process is expected to take several months.

The WTO's sixth Ministerial was held in Hong Kong from December 13-18, 2005. Although certain concrete steps were taken on assistance to least developed countries (LDCs), an end date of 2013 for agricultural exports subsidies, and the use of a "Swiss" formula in the NAMA negotiations, broader agreement on the modalities of the talks remain elusive. A new deadline for agriculture and industrial market modalities was set for April 30, 2006, but that deadline, like all the others, came and went.[29] An end of June 2006 summit of trade negotiators likewise failed in their attempt to achieve agriculture and industrial market access modalities. On July 24, 2006, Director-General Pascal Lamy "suspended" the negotiations after a July 23 session of the G-6 negotiating group (United States, European Union, Japan, Australia, Brazil, and India) ended in deadlock. Lamy made no indication on when, or if, the negotiations would resume. Subsequently, several WTO groups such as the G-20 and the Cairns Group of agricultural exporters have met to lay the groundwork to restart the negotiations.

On January 31, 2007, Lamy announced the talks were back in "full negotiating mode" with the prospect of formal negotiating sessions resuming in Geneva.[30] Although members of the G-6 negotiating group on April 12, 2007, pledged to complete the negotiations by the end of 2007, negotiations between the United States, European Union, Brazil, and India again failed to reach an agreement on key agricultural and industrial market access modalities at a meeting in Potsdam, Germany, on June 21, 2007. During the summer and fall of 2007, the chairmen of the agriculture, industrial, and rules negotiating groups released new draft texts. Revisions to these texts were released on February 8, 2008. While elements of each of these texts have proved controversial, they have served to continue the engagement of the various parties in Geneva at a time when many have predicted the demise of the round.

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[28] "Pelosi, Hoyer, Rangel, and Levin Statement on Trade," press release June 29, 2007.

[29] See CRS Report RL33176, *The World Trade Organization: The Hong Kong Ministerial*, coordinated by Ian F. Fergusson.

[30] "Lamy Announces Doha Talks Back in Full Negotiating Mode," *International Trade Reporter*, February 8, 2007.

Free Trade Area of the Americas

In 1994, 34 Western Hemisphere nations met at the first Summit of the Americas, envisioning a plan for a Free Trade Area of the Americas (FTAA) by January 2005. The FTAA is a regional trade proposal among 34 nations of the Western Hemisphere that would promote economic integration by creating, as originally conceived, a comprehensive (presumably WTO-plus) framework for reducing tariff and nontariff barriers to trade and investment.[31] The United States traded $1,066.4 billion worth of goods with the FTAA countries in 2007: $426.6 billion in exports and $649.8 billion in imports.

Formal negotiations commenced in 1998, and five years later, the third draft text of the agreement was presented at the Miami trade ministerial held November 20-21, 2003. The FTAA negotiations, however, have been deadlocked, with Brazil and the United States, the co-chairs of the Trade Negotiations Committee (TNC) that oversees the process, at odds over how to proceed. Deep differences remain unresolved as reflected in the Ministerial Declaration, which has taken the FTAA in a new direction. It calls for a two-tier framework comprising a set of "common rights and obligations" for all countries, augmented by voluntary plurilateral arrangements with country benefits related to commitments. The fourth Summit of the Americas took place in November 2005 at Mar del Plata, Argentina, but there was no agreement on reviving negotiations.

Progress on the FTAA still depends on Brazil and the United States agreeing on a common set of obligations and defining parameters for plurilateral arrangements. This goal remains elusive, despite ongoing communications between their trade representatives. In the meantime, the trade dynamics of the region are changing, with many in the region heading toward bilateral agreements with the United States, the EU, and each other. Brazil and other Mercosur countries may have to evaluate the welfare tradeoffs of entering a deeper versus a shallower two-tier FTAA, or no FTAA at all, given the agreements forming around them. In March 2005, the Government Accountability Office (GAO) issued a report criticizing the handling of the FTAA negotiations by its two co-chairs, the United States and Brazil. It faulted two mechanisms intended to facilitate progress as having failed to revitalize the talks, the two-tiered negotiating structure and the co-chairmanship of the U.S. and Brazil. It also faulted the two nations for placing a higher priority on other trade negotiations, such as the Doha Round and other regional FTAs.[32]

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[31] For more information, see CRS Report RS20864, *A Free Trade Area of the Americas: Status of Negotiations and Major Policy Issues*, by J. F. Hornbeck.

[32] GAO Report 05-168, *FTAA: Missed Deadline Prompts Efforts to Restart Stalled Hemispheric Trade Negotiations*, March 2005.

Bilateral Negotiations

Malaysia. The Administration announced FTA negotiations with Malaysia on March 8, 2006.[33] Despite five rounds of negotiations, the USTR announced on March 23, 2007 that an agreement would not be reached in time to be considered under TPA.[34] However, a sixth negotiating session took place on January 14-18, 2008. Malaysia is the 15th largest trading partner of the United States with two-way trade totaling $43.0 billion in 2007 — $10.2 billion in exports and $32.8 billion in imports. Major exports to Malaysia include electronic circuitry, computer parts and equipment, scientific equipment, aircraft, and machinery. U.S. imports from Malaysia include computers and parts, electrical machinery, telecommunications equipment, furniture, and rubber products.

In the negotiations, the United States is seeking the removal of import licensing restrictions on motor vehicles, removal of government procurement restrictions, increased IPR protection, and liberalized protected financial services. Government procurement restrictions, in which a certain share of Malaysian business is reserved for ethnic Malays, has been identified as a major obstacle in the negotiations. A second major disagreement is the scope of services liberalization. The United States is reportedly insisting on using a negative list modality for the services negotiations, which would result in liberalization of all services not specifically exempted. Conversely, the Malaysians are seeking a positive list — each service sector would require specific identification and agreement to be covered.[35]

Thailand. On February 12, 2004, the Administration officially notified Congress of its intent to negotiate an FTA with Thailand. Negotiations began formally on June 28, 2004, in Hawaii and the latest round of talks took place in January 2006, in Chiang Min, Thailand. These negotiations were accompanied by demonstrations in Thailand over proposed IPR provisions, and by the subsequent resignation of the chief Thai negotiator.[36] Talks were put on hold by Thailand in March 2006 prior to a snap election in April, the results of which were later invalidated by Thailand's judiciary. On September 19, 2006, Thailand experienced a military coup which overthrew the government of Thaksin Shinawatra. While the United States strongly condemned the coup, the negotiations reportedly were not formally suspended, though they remain in limbo.[37] In June 2006, Ways and Means Committee Member Phil English announced his opposition to the U.S.-Thailand FTA, claiming that "Thailand continues to demonstrate that it does not share

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[33] For further information, see CRS Report RL33445, *The Proposed U.S.-Malaysia Free Trade Agreement*, by Michael F. Martin.

[34] "USTR Says U.S.-Malaysia FTA Negotiations Will Not Conclude Prior to April TPA Deadline," *International Trade Reporter*, March 29, 2007.

[35] " Negative List for Services Emerges as Another Hurdle in FTA Negotiations," *Inside U.S. Trade*, November 10, 2006.

[36] "Health NGOs to Focus Pressure on U.S. Ahead of Next Thai FTA Talks," *Inside U.S. Trade*, January 27, 2006.

[37] "New Thai Government Remains Committed To U.S. FTA Talks, but Wants More Oversight," *International Trade Reporter*, October 26, 2006.

common views with the United States with respect to ... a country's right to police its markets effectively from predatory or illegally traded imports."[38]

The Administration sees the potential benefits of an FTA with Thailand as: (1) promotion of U.S. exports, notably benefitting U.S. farmers and the auto and auto parts industries; (2) protection of U.S. investment; and (3) advancement of the Enterprise for ASEAN Initiative (mentioned later in this issue brief) and the U.S.-Singapore FTA.[39] It also emphasized Thailand's importance on military, security, and political issues. Thailand was the 22nd largest U.S. trading partner in 2007 with two-way trade at $30.5 billion — $22.7 billion in U.S. imports, $7.8 billion in U.S. exports. Leading U.S. imports were computers and parts, television receivers, and jewelry; and leading exports were integrated circuits, semiconductors, computers, and computer parts. The continuation of a 25% U.S. tariff on light trucks, intellectual property rights protections, services, and sugar are issues in the negotiations.[40]

United Arab Emirates. On November 15, 2004, the USTR sent formal notification to Congress that the Administration intended to pursue FTA negotiations with both the United Arab Emirates (UAE) and Oman. Talks began in March 2005. The USTR said that both of these FTAs would be a move toward the President's plan for a Middle East Free Trade Area. (See "Other Potential Trade Agreements" below.) No negotiations have taken place since March 2006 in the aftermath of the Dubai ports controversy when a Dubai firm attempted to assume management contracts stemming from its investment in a company operating ports in the United States. This controversy may affect the type of investment and government procurement provisions that are included in this FTA. In 2007, the United States imported $1.3 billion from the UAE and exported $10.9 billion to the Emirates making it the 38th largest trade partner of the United States. The leading U.S. import was crude petroleum. Leading U.S. exports were aircraft, cars, and machinery.

Other Potential Trade Agreements

Middle East-North African Free Trade Agreement. On May 9, 2003, President Bush announced an initiative to create a U.S.-Middle East Free Trade Agreement by 2013. This initiative would create a multi-stage process to prepare countries in the region for an FTA with the United States.[41] Countries would begin the process by negotiating accession to the World Trade Organization[42] and

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[38] Rep. Phil English, Letter to President Bush, June 8, 2006.

[39] The White House, "Fact Sheet on Free Trade and Thailand," October 19, 2003.

[40] For further information, see CRS Report RL32314. *U.S.-Thailand Free Trade Agreement Negotiations*, by Raymond J. Ahearn and Wayne M. Morrison.

[41] For further information, see CRS Report RL32638, *Middle East Free Trade Area: Progress Report*, by Mary Jane Bolle.

[42] In the Middle East region, Afghanistan, Algeria, Iran, Iraq, Libya, Lebanon, Syria, and Yemen are not members of the WTO. Saudi Arabia became a WTO member in December 2005.

subsequently by concluding Bilateral Investment Treaties (BIT) and Trade and Investment Framework Agreements (TIFA) with the United States.[43] As domestic reforms progress, countries would then negotiate FTAs with the United States, possibly linking to other existing or in-progress FTAs, such as with Jordan, Morocco, Bahrain, Oman, or the United Arab Emirates. Qatar and Kuwait have also been mentioned as a near-term FTA candidates. The USTR has stated that FTAs with Middle Eastern countries are consistent with the 9/11 Commission recommendation that the United States encourage development in the Middle East by expanding trade.

The Administration's rationale for this potential FTA is to provide the incentive for the transformation of the economies of the Middle East and their integration into the world economy. One study reports that, since 1980, the share of world exports emanating from middle eastern countries has dropped from 13.5% to 4%, and that per capita income has fallen by 25% in the Arab world.[44]

Enterprise for ASEAN. This initiative, announced by President Bush on October 26, 2002, provides the impetus for the negotiation of bilateral FTAs with individual countries of the Association of Southeast Asian Nations, or ASEAN (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam). The first stage of this process is expected to be the negotiation of a region-wide trade and investment framework agreement (TIFA), which is seen as the first step in the process of negotiating individual FTAs with ASEAN member states. Thailand is the first candidate for an FTA under this initiative (see earlier section on Thailand). As seen by the Administration, the principal benefits to the United States of FTAs with ASEAN member states are the potential to reduce high tariffs on agricultural products and to eliminate restrictive tariff-rate quotas on other U.S. exports, while the major benefit to ASEAN countries would be improved access to the U.S. market. The initiative is also seen as a way of countering growing Chinese influence in the region. Two-way trade with ASEAN countries reached $166.9 billion in 2007, consisting of imports of $111.7 billion and exports of $55.2 billion.

Egypt. Egypt was the 51st largest trading partner of the United States with U.S. imports in 2007 of $2.4 billion, U.S. exports of $5.3 billion, and two-way trade totaling $7.7 billion. Major export to Egypt include cereals, aircraft and parts, machinery, vehicles and parts, telecommunications equipment, and arms; imports include textiles, apparel, carpets, petroleum, and iron and steel. With a population of 65.3 million, Egypt is the largest country in the Middle East. Egypt has been a member of the World Trade Organization since 1995, and it has concluded a TIFA with the United States.

Egypt's central position in the Arab world has led to speculation that the United States would seek to launch FTA negotiations. The two sides reportedly have established a number of exploratory "subcommittees" to prepare for the

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[43] "President Bush Lays Out Broad Plan for Regional FTA with Middle East by 2013," *International Trade Reporter*, May 15, 2003.

[44] Edward Gresser, "Blank Spot on the Map: How Trade Policy Is Working Against the War on Terror," Progressive Policy Institute, *Policy Report*, February 2003.

negotiations.[45] In November 2004, a House Ways and Means Committee delegation led by former Chairman Thomas found reforms in customs administration, tariff reduction, and tax reform encouraging, but they cited continuing intellectual property rights violations and Egyptian restrictions on U.S. agricultural imports as impediments to an agreement.[46] In addition, discriminatory taxes on imports and poor labor rights standards have also been mentioned as impediments to an agreement.[47] In January 2005, the Pharmaceutical Research and Manufacturers of America (PhRMA) indicated that it opposed launching FTA negotiations with Egypt after the Egyptian Ministry of Health granted marketing approval to generic drugs without, PhRMA alleges, providing legally required data exclusivity periods.[48] The United States has reportedly suspended consideration of an FTA with Egypt due to continuing human rights issues, including imprisonment of a presidential candidate in the 2005 elections and concerns over the treatment of Sudanese refugees.[49]

Taiwan. An FTA with Taiwan has been advanced by proponents in the last several years.[50] In the 110th Congress, H.Con.Res. 137 (Berkley) was introduced on May 1, 2007 calling for the launch of FTA negotiations with Taiwan. Taiwan is the ninth largest U.S. trading partner with total two-way trade in 2007 of $62.7 billion. The United States is now Taiwan's second largest trading partner after mainland China. In 2007, the United States imported $38.1 billion in merchandise from Taiwan with computers, circuitry, vehicle parts, television transmission, and telecommunications equipment leading. U.S. exports to Taiwan, which totaled $24.6 billion, included integrated electronic circuits, electrical machinery, aircraft parts, corn, and soybeans. While the Bush Administration has indicated support for the concept of a U.S.-Taiwan FTA, it cites several outstanding trade disputes, including Taiwan's enforcement of intellectual property rights, the imposition of excessive standards, testing, certification and labeling requirements, and Taiwanese rice import quotas.[51] In addition, the negotiation of an FTA with Taiwan likely would encounter the ire of the mainland Chinese government, which considers Taiwan to be a province of China. Taiwan acceded to the WTO on January 1, 2002, and signed a Trade and Investment Framework Agreement with the United States in 1994.

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[45] U.S., Egypt Set Up 'Subcommittees' To Lay Groundwork for Free Trade Talks, *International Trade Reporter*, July 21, 2005.

[46] House Ways and Means Committee, "Congressional Delegation to Tunisia, Jordan, Oman, and Egypt: Finding by the Delegation," November 17, 2004, at [http://waysandmeans.house.gov/media/pdf/trade/111704codelfindings.pdf]

[47] "U.S. to Consider Egypt FTA After Next TIFA, Wants Further Reforms," *Inside U.S. Trade*, January 14, 2005.

[48] "PHRMA Calls for U.S. to Oppose Egypt FTA Over IPR Violations," *Inside U.S. Trade*, February 4, 2005.

[49] "Free Trade Talks with Egypt Put on Hold Pending Progress on Political, Other Issues," *International Trade Reporter*, January 26, 2006.

[50] For further information, see CRS Report RS20683, *Taiwan's Accession to the WTO and Its Economic Relations with the United States and China*, by Wayne M. Morrison.

[51] U.S. Trade Representative, *2005 National Trade Estimate Report on Foreign Trade Barriers*, pp. 591-608.

New Zealand. Over the years, there has been some Congressional interest in launching FTA negotiations with New Zealand. In the 109th Congress, 54 House Members launched the "Friends of New Zealand Congressional Caucus" to demonstrate support for FTA negotiations. Proponents claimed an FTA with New Zealand would be a natural complement to then ongoing U.S. FTA negotiations with Australia due to the high degree of integration of the Australian and New Zealand economies. Conversely, New Zealand fears that the solo U.S.-Australian FTA will reorient U.S. trade and investment away from New Zealand towards Australia.

However, Administration officials have enumerated several political and security impediments to a potential FTA, including New Zealand's longstanding refusal to allow nuclear powered ships into its harbors and its refusal to support the United States in the Iraq war.[52] However, New Zealand has participated in the coalition in Afghanistan. In addition, the United States has also joined negotiations with countries of the Trans-Pacific Economic Partnership Agreement (Brunei, Chile, Singapore and New Zealand) in the negotiations of the investment and financial services chapters of that agreement which are still under discussion. This process may lead to further integration among the five countries (Singapore and Chile have implemented FTAs with the United States). An FTA with New Zealand may also entail tough negotiations on sensitive U.S. agriculture sectors such as beef and lamb, although many of these issues were also under negotiation with Australia. New Zealand was the 54th largest trading partner of the United States in 2007 with two-way trade of $5.8 billion. U.S. imports of $3.1 billion were led by meat, dairy products, wood products, and machinery. U.S. exports of $2.7 billion were led by machinery, aircraft and parts, electronic equipment and vehicles.

[52] "Zoellick Says Relationship with New Zealand Makes FTA a Challenge," *Inside U.S. Trade*, May 23, 2003.

Table 2. Trade Negotiations During the 110th Congress

Agreement	U.S. Total Trade+ ($ bill.)	Status	Sensitive Areas
Doha Development Agenda of the WTO	$2,969*	A work program was produced at the trade ministerial meeting in Doha in Nov. 2001. On Aug. 1, 2004, negotiators reached a framework agreement on the conduct of future negotiations. The sixth WTO Ministerial was held at Hong Kong in December 2005. Talks suspended on July 24, 2006. Restarted 2007.	Agriculture, industrial market access, services, trade facilitation, development issues
Free Trade Area of the Americas	$1066.4	Negotiations began in 1998. Trade ministers met in Miami on Nov. 20-21, 2003, where the third draft text of the agreement was presented. Talks have stalled, with no date for the next ministerial meeting.	Agriculture, antidumping, textiles and apparel, worker rights, IPR
U.S. - South Korea FTA	$78.4	Administration notified Congress of intent to begin negotiations on Feb. 3, 2006. Negotiations concluded and President notified Congress of intent to sign FTA on April 1, 2007; signed on June 30, 2007.	Agriculture, automobiles, non-tariff barriers, trade remedies
U.S.-Malaysia FTA	$43.0	Administration notified Congress of intent to begin negotiations on March 8, 2006. Latest round held Jan. 14-18, 2008.	Financial services, autos, IPR
U.S.-Thailand FTA	$30.5	The Administration officially notified Congress of its intent to negotiate an FTA on Feb. 12, 2004. Negotiations formally began on June 28, 2004. Last negotiating round in January 2006.	Sugar, trucks, telecommunications, IPR
U.S.-Colombia FTA	$17.1	Negotiations began May 2004; Negotiations concluded on Feb. 27, 2006, and President notified Congress on Aug. 24, 2006 of intent to sign FTA; agreement signed Nov. 22, 2006. Legislation implementing introduced April 8, 2008; TPA rules governing consideration of legislation suspended by House, April 10.	Agriculture, labor, IPR, human rights
U.S.-United Arab Emirates	$12.2	Notified with Oman Nov. 2004; talks began the week of Mar. 8, 2005. Last negotiating round in March 2006.	Worker rights, investment, services
U.S.- Panama	$3.9	On Nov. 18, 2003, the Administration formally notified Congress of its intent to begin negotiations with Panama. Talks began formally on Apr. 25, 2004. Negotiations concluded December 19, 2006. President notified Congress of intent to sign FTA on March 30, 2007; signed FTA on June 28, 2007.	Agriculture, services, maritime services

Source: Congressional Research Service; U.S. International Trade Commission.

+Domestic exports (Fas value) plus imports for consumption (Customs value) with countries of proposed agreement in 2007.

*USITC Trade with most-favored-nation (MFN) Countries.