

# CRS Issue Brief for Congress

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## Trade Negotiations During the 109th Congress

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## Trade Negotiations During the 109<sup>th</sup> Congress

### SUMMARY

The Bush Administration has made bilateral and regional free-trade agreements (FTAs) more important elements 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.

The controversial CAFTA (Central American Free Trade Agreement) — an agreement signed with the five countries of the Central American Common Market (CACM) and the Dominican Republic — was passed by the House on July 28, 2005, by a vote of 217-215. Later in the day, the Senate approved the House version of the legislation to implement CAFTA, and President Bush signed it on August 2 (P.L. 109-53). In December 2005, Congress approved implementing legislation for the Bahrain FTA and President Bush signed the legislation of January 11, 2006 (P.L. 109-169).

The United States is participating in several other regional and bilateral trade negotiations. Agreements were concluded and became effective during the 108<sup>th</sup> Congress with Australia, Chile, and Singapore. Also during the 108<sup>th</sup> Congress, an agreement with Morocco was approved, but it did not take effect until January 1, 2006. Negotiations are underway with the Southern African Customs Union (SACU), Panama, Thailand, three

Andean nations (Colombia, Peru, and Ecuador), the United Arab Emirates, and Oman. Negotiations have recently concluded with Peru and Oman. Several other trade initiatives are under discussion, including a U.S.-Middle East FTA and an FTA with countries in southeast Asia.

An ongoing regional initiative is the Free Trade Area of the Americas. In April 1998, 34 Western Hemisphere nations formally initiated negotiations on tariffs and nontariff trade barriers in the hemisphere, but the talks have now stalled.

The broadest trade initiative being negotiated is the multilateral trade negotiations in the World Trade Organization (WTO). In November 2001, trade ministers from 142 WTO member countries agreed to launch a new round of trade talks covering market access, WTO institutional rules, and developing-country issues. The WTO’s 6th Ministerial was held at Hong Kong in December 2005, but no breakthrough on negotiating modalities was reached.

Potential agreements resulting from current trade negotiations may be considered by Congress under trade promotion authority (fast-track authority) legislation enacted in 2002. That legislation covers agreements signed before June 30, 2007. 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.

## MOST RECENT DEVELOPMENTS

**January 11, 2006:** President Bush signed the U.S.-Bahrain Free Trade Agreement Implementation Act (P.L. 109-169).

**January 10, 2006:** The United States and Panama held a 7<sup>th</sup> round of negotiations in Washington, D.C.

**January 9, 2006:** The United States and Thailand held a 6<sup>th</sup> round of negotiations in Chiang Min, Thailand.

**December 13-18, 2005:** The World Trade Organization held its 6<sup>th</sup> Ministerial in Hong Kong.

**December 7, 2005:** The United States and Peru concluded a free trade agreement. Meanwhile, FTA talks with the Andean countries of Ecuador and Colombia have been suspended until 2006.

## BACKGROUND AND ANALYSIS

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 108<sup>th</sup> Congress, U.S. officials negotiated and Congress approved four bilateral free-trade agreements with Australia, Chile, Morocco, and Singapore.<sup>1</sup> Currently, the Bush Administration is making bilateral and regional free-trade agreements more important elements of its trade policy. The multilateral arena is no longer the only means, or perhaps even the principal means, by which the United States is pursuing liberalized trade.<sup>2</sup>

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.

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<sup>1</sup> 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).

<sup>2</sup> 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.

## 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.<sup>3</sup>

Critics argue that the accent on regional and bilateral negotiations will undermine the World Trade Organization (WTO) and increase the risk of trade diversion. Trade diversion occurs when the 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 results from the plethora of negotiated FTAs, according to one article, “is a ‘spaghetti bowl’ of rules, arbitrary definitions of which products come from where, and a multiplicity of tariffs depending on source.”<sup>4</sup> Nonetheless, in the aftermath of the failure of the WTO Ministerial meeting in Cancún, Mexico in 2003, then-USTR Zoellick indicated that the United States would more aggressively pursue bilateral and regional free trade agreements. “We are going to keep trying to open markets one way or the other,” he reportedly said.<sup>5</sup>

The manner in which the Administration chooses potential 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 can 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.<sup>6</sup> A GAO study released in January

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<sup>3</sup> Robert B. Zoellick, “Unleashing the Trade Winds,” *The Economist*, December 7, 2002, p.29.

<sup>4</sup> Jagdish Bhagwati and Arvind Panagariya, “Bilateral Trade Treaties Are a Sham,” *Financial Times*, July 14, 2003.

<sup>5</sup> “U.S. Plans to Accelerate Own Trade Agreements Talks,” *Congress Daily*, September 14, 2003.

<sup>6</sup> These considerations included cooperation with the United States in its foreign and security (continued...)

2004 reported that an interagency process had been established to assess FTA partners using 6 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.<sup>7</sup> More recently, USTR Portman announced that new FTA partners would be determined by which countries could negotiate an agreement before the expiration of U.S. trade promotion authority in June 2007.<sup>8</sup>

Some Members of Congress have questioned the manner in which potential FTA partners are chosen. Senator Max Baucus criticized the Administration for overlooking high volume trading partners in Asia and has been quoted saying that "this Administration's trade policy is dictated largely by its foreign policy, not by economics."<sup>9</sup> In addition, some business groups have expressed a desire to concentrate more on the multilateral negotiations of the WTO, which potentially could yield greater commercial gains.<sup>10</sup> In January 2005, the National Association of Manufacturers advocated the commencement of FTA negotiations with Egypt, India, Malaysia, New Zealand, and South Korea.<sup>11</sup>

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' to 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, will provide nations with the ability to lift themselves out of poverty and to insure stability.<sup>12</sup>

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<sup>6</sup> (...continued)

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.

<sup>7</sup> 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.

<sup>8</sup> "Portman Says FTA Decisions Based on Ability to Sign by 2007," *International Trade Reporter*, October 7, 2005.

<sup>9</sup> "Baucus Proposes FTAs in Asia to Offset Chinese Influence," *Inside U.S. Trade*, December 10, 2004.

<sup>10</sup> "Filling Up with Appetizers," *Congress Daily AM*, June 11, 2003.

<sup>11</sup> NAM, "Recommended Candidates for Additional Free Trade Agreement Negotiations," available at [[http://www.nam.org/s\\_nam/bin.asp?CID=46&DID=233031&DOC=FILE.PDF](http://www.nam.org/s_nam/bin.asp?CID=46&DID=233031&DOC=FILE.PDF)]

<sup>12</sup> National Security Council, *National Security Strategy of the United States*, September 2002, (continued...)

While the Administration is pursuing trade agreements on multiple fronts, critics question whether the United States should be negotiating trade agreements at all. They state 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.

The result of the competitive liberalization strategy is that the United States is involved in an unprecedented number of trade negotiations. Multilaterally, the United States and 149 countries are participating in the Doha Development Agenda under the auspices of the World Trade Organization. Regionally, the United States has engaged with 33 other western hemisphere countries in an effort to create a Free Trade Area of the Americas, and has conducted FTA negotiations with countries in South America (Colombia, Peru, and Ecuador), Southern Africa (Botswana, Lesotho, Namibia, South Africa, and Swaziland), Panama, Thailand, Oman, and the United Arab Emirates. Of these, agreements have been concluded with Peru and Oman. The United States has ratified FTAs with Bahrain and 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 have been passed by the United States, but the agreements have not yet entered into force. Agreements with Singapore and Chile entered into force on January 1, 2004, an agreement with Australia entered into force on January 1, 2005, and an agreement with Morocco entered into force on January 1, 2006.

## Notification and Consultation Requirements

Later sections of this Issue Brief 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 June 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.<sup>13</sup> 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

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<sup>12</sup> (...continued)

[<http://www.whitehouse.gov/nsc/nss.pdf>], pp. 17-21.

<sup>13</sup> For further information, see CRS Report RL31974, *Trade Agreements: Requirements for Presidential Consultation, Notices, and Reports to Congress Regarding Negotiations*, by Vladimir N. Pregelj, and CRS Report RL32011, *Trade Agreements: Procedure for Congressional Approval and Implementation*, by Vladimir N. Pregelj.

and after submitting this notice, the Administration must consult with the relevant congressional committees and the Congressional Oversight Group (COG).<sup>14</sup> 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 (at least 90 calendar days for an agreement with Chile or with Singapore), 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 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.

## Agreements Signed

**U.S.-Dominican Republic-Central American FTA (DR-CAFTA).** On January 8, 2003, negotiations formally began on an FTA between the United States and the five nations composing the Central American Common Market (CACM) — Costa Rica, El

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<sup>14</sup> 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.



Salvador, Guatemala, Honduras, and Nicaragua.<sup>15</sup> U.S. trade with the region totaled \$24.0 billion in 2004. The United States imported \$13.1 billion (primarily apparel items, bananas, coffee, and integrated circuits) and exported \$10.9 billion (led by apparel, textiles, electrical generating equipment, and electrical components for assembly).

On December 17, 2003, the United States concluded negotiations on a U.S.-Central America Free Trade Agreement (CAFTA) with four of the five CACM countries (Guatemala, Honduras, El Salvador, and Nicaragua). Costa Rica later agreed to CAFTA on January 25, 2004, after resolving market access issues with the United States in the areas of telecommunications, insurance, and agriculture. President Bush notified his intent to enter into the agreement on February 20, 2004. The parties signed CAFTA on May 28, 2004, at a ceremony at the Organization of American States in Washington, D.C. Just as negotiations on CAFTA were completed, the United States began negotiating an FTA with the Dominican Republic that would integrate the Dominican Republic into the FTA with the Central American countries. Negotiations between the United States and the Dominican Republic began on January 12, 2004, and concluded on March 15, 2004. As negotiated between the United States and the Dominican Republic, the Dominican Republic would have its own market access provisions, but would accept the CAFTA framework already negotiated. On March 25, 2004, the President notified Congress of his intent to sign the FTA with the Dominican Republic. A new agreement was signed by all seven countries in Washington, D.C., on August 5, 2004, and was referred to as the DR-CAFTA. The House Ways and Means Committee held its first hearing into CAFTA on April 21, 2005. The agreement has been ratified with three of the signatories: El Salvador on December 7, 2004; Honduras on March 3, 2005; and Guatemala on March 10, 2005.

President Bush sent draft implementing legislation to Congress on June 23, 2005. On the same day, the legislation was introduced in the House (H.R. 3045) and in the Senate (S. 1307). The bills were referred to the Ways and Means Committee and to the Finance Committee respectively. The Senate Finance Committee approved S. 1307 by voice vote on June 29, 2005, and the full Senate approved the bill by a 54-45 vote on June 30, 2005. The House Ways and Means Committee ordered H.R. 3045 favorably reported by a 25-16 vote on June 30, 2005. The House approved the legislation on July 28, 2005, by a vote of 217-215, and later in the day this bill passed the Senate by a vote of 55-45.<sup>16</sup> The President signed the legislation on August 2 (P.L. 109-53). Although DR-CAFTA was scheduled to be implemented on January 1, 2006, it has not taken effect with any of the partners due to a dispute over the necessity of enacting implementing legislation in the DR-CAFTA countries.

**U.S.-Bahrain FTA.** On January 26, 2004, formal negotiations began on a U.S.-Bahrain FTA. Talks concluded after three rounds on May 27, 2004.<sup>17</sup> On September 14, 2004, the two countries signed an agreement. The House approved implementing legislation by the vote 327-95 in the House on December 7, 2005; the Senate approved the measure by

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<sup>15</sup> For further information, see CRS Report RL31870, *The Dominican Republic-Central America-United States FTA (DR-CAFTA)*, by J.F. Hornbeck.

<sup>16</sup> Although the Senate had acted previously, the final legislation must originate in the House (as a revenue measure), and the bills must be identical (under TPA procedures), hence the revote.

<sup>17</sup> For further information, see CRS Report RS21846, *Proposed U.S.-Bahrain Free Trade Agreement*, by Martin A. Weiss.

unanimous consent on December 13 and the President signed the legislation on January 11, 2006 (P.L. 109-169). The Administration has praised the economic and commercial environment of the sheikhdom. The FTA is touted by the Administration as a first step in the creation of the Middle East Free Trade Area by 2013, and it foresees the possibility that other nations in the gulf region could link to this agreement as they reform their economies and develop their trade potential. Bahrain is a kingdom of 690,000 persons (mid-year 2003) with a GDP of \$9.1 billion (2003).<sup>18</sup> Bahrain was a founding member of the WTO in 1995 and signed a Bilateral Investment Treaty (BIT) with the United States in 2001 and a Trade and Investment Framework Agreement (TIFA) in 2002. The nation has diversified its economy away from dependence on petroleum and has created a services hub for information technology, telecommunications and health care. U.S. merchandise trade with Bahrain totaled \$684 million in 2004: imports of \$406 million included apparel, textiles, fertilizers, chemicals, and aluminum and exports of \$278 million were led by aircraft and aircraft parts, military equipment, passenger vehicles, machinery, and, not surprisingly, air conditioning equipment.

## Agreements Under Negotiation

### Multilateral Trade Negotiations

At the 4<sup>th</sup> 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.<sup>19</sup> 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 on-going 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.<sup>20</sup> This framework had been the goal of the unsuccessful 5<sup>th</sup> Ministerial, held in Cancún, Mexico, in September 2003. The framework provides a blueprint for future negotiations on agriculture, non-agricultural market access (NAMA), and

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<sup>18</sup> The World Bank. “Country at a Glance Tables” available on the World Bank web page at [<http://www.worldbank.org/data/countrydata/countrydata.html>].

<sup>19</sup> For further information, see CRS Report RL32060, *World Trade Organization Negotiations: The Doha Development Agenda*, by Lenore Sek.

<sup>20</sup> 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.

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

The WTO's 6<sup>th</sup> Ministerial was held in Hong Kong from December 13-18, 2005. Although certain concrete steps were taken on assistance to 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. In order to keep negotiations on track for an year-end 2006 resolution, a new deadline for modalities was set for April 30, 2006.

## Regional Negotiations

**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.<sup>21</sup> The United States traded \$816.6 billion worth of goods with the FTAA countries in 2004: \$309.9 billion in exports and \$506.6 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, are at a crossroads, 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 4<sup>th</sup> Summit of the Americas took place in 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,

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<sup>21</sup> 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.

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.<sup>22</sup>

**U.S.-Southern African Customs Union FTA.** On November 4, 2002, the USTR notified Congress of the intent to negotiate an FTA with the Southern African Customs Union (SACU).<sup>23</sup> The first round of talks began in Johannesburg, South Africa on June 3, 2003. SACU is a customs union composed of South Africa, Botswana, Lesotho, Namibia, and Swaziland. A large degree of economic integration exists among the SACU states led by South Africa, the dominant economic power. U.S. imports from SACU totaled \$6.9 billion in 2004, composed of minerals such as platinum, diamonds, and titanium, textiles and apparel, vehicles, and automotive parts. U.S. exports to SACU totaled \$3.1 billion, led by aircraft, vehicles, construction and agricultural equipment, and computers. Potential problems include competition issues concerning the South African telecommunications industry and government procurement, especially South Africa's Black Economic Empowerment Program, U.S. textile tariffs and quotas, and intellectual property rights with regard to access to HIV/AIDS medicines. While all the SACU states are eligible for the tariff preferences under the Africa Growth and Opportunity Act (Title I, P.L. 106-200), the negotiation of an FTA would "lock-in" and potentially expand such tariff advantages. The talks remained stalled at year-end 2005, with no negotiations formally scheduled.<sup>24</sup>

**U.S.-Andean FTA.** On November 18, 2003, the Administration formally notified Congress of the intent to initiate negotiations for an FTA with Colombia, Peru, Ecuador, and Bolivia. The negotiations began on May 18-19, 2004, with Colombia, Peru, and Ecuador; 13 rounds have been held so far with the latest trilateral talks being held the week of November 14, 2005.<sup>25</sup> The United States and Peru announced a bilateral deal on an FTA on December 7, 2005 after resolving their agriculture and IPR issues. It has not been decided whether to seek Congressional approval for this agreement as a stand-alone FTA, or whether to wait for a deal with Colombia and Ecuador and submit them to Congress together. Negotiations with Colombia and Ecuador are scheduled to continue in early 2006. U.S. preferential treatment for imports from Colombia, Peru, Ecuador, and Bolivia terminate at year-end 2006 and may not be renewed. In 2004, the United States imported \$15.5 billion from the four Andean countries and exported \$7.7 billion, for a total of \$23.2 billion in trade. Colombia accounted for half of that total. Leading U.S. imports in 2004 from the four countries were crude and refined petroleum oils, which were primarily from Colombia and Ecuador; bananas; copper; coffee; and cut flowers. About half of U.S. imports from the region came in under existing Andean trade preferences. Leading U.S. exports were

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<sup>22</sup> GAO Report 05-168, *FTAA: Missed Deadline Prompts Efforts to Restart Stalled Hemispheric Trade Negotiations*, March 2005.

<sup>23</sup> For further information, see CRS Report RS21387, *United States-Southern African Customs Union (SACU) Free Trade Agreement Negotiations: Background and Potential Issues*, by Danielle Langton.

<sup>24</sup> "U.S. Free Trade Negotiations With Africa Fail to Generate Much-Needed Momentum," *International Trade Reporter*, November 24, 2005.

<sup>25</sup> For further information, see CRS Report RL32770. *Andean-U.S. Free-Trade Agreement Negotiations*, by Angeles Villarreal.

machinery parts, data processing machines, corn, wheat, and telecommunications transmission apparatus such as cell phones. Negotiators have had difficulty resolving issues concerning agricultural market access, data exclusivity for pharmaceutical patents, “second-use” patent provisions, and attempts to protect IPR rights of Andean-origin biodiversity. Negotiators are also attempting to resolve several investment disputes between U.S. companies and Peru and Ecuador.

**U.S.-United Arab Emirates-Oman FTA.** On November 15, 2004, the USTR sent formal notification to Congress that the Administration intended to pursue FTA negotiations with the United Arab Emirates (UAE) and Oman. Talks began in March 2005 with each nation. The USTR said that an FTA would be a move toward the President’s plan for a Middle East Free Trade Area. (See “Other Potential Trade Agreements” below.) The USTR also said that an FTA with the UAE and Oman would build on FTAs already in effect with Israel, Jordan, and Morocco and an FTA signed with Bahrain, and that an FTA would encourage the members of the Gulf Cooperation Council to take measures to promote trade and investment. The USTR stated that FTAs with Middle Eastern countries were consistent with the 9/11 Commission recommendation that the United States encourage development in the Middle East by expanding trade. On October 3, 2005, USTR announced that negotiations had been concluded with Oman and on October 17 President Bush notified Congress his intention to sign this FTA under the timetable set forth by TPA.<sup>26</sup> Worker protections in the UAE and Oman have been a controversial issue in the negotiations. Both nations rely heavily on guest workers, and reportedly place heavy restrictions on the right to strike or to organize.<sup>27</sup> Further, the Administration has identified the UAE as one of four countries that might be the subject of U.S. sanctions for human trafficking.<sup>28</sup> In 2004, the United States imported \$1.5 billion from both the UAE and Oman (\$1.1 billion - UAE; \$0.4 billion - Oman) and exported \$4.0 billion to both countries (\$3.6 billion - UAE; \$0.3 billion - Oman; numbers do not add to total due to rounding). The leading U.S. import by far was crude petroleum. Leading U.S. exports were aircraft, cars, and machinery.

## Bilateral Negotiations

**U.S.-Panama FTA.** During the FTAA 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.<sup>29</sup> Those bilateral negotiations began formally on April 25, 2004, in Panama City, Panama. The negotiations have progressed quickly in part because they have relied on the text of the DR-CAFTA agreement as an overall framework for discussion. 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.

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<sup>26</sup> 70 *Federal Register* 61021, October 19, 2005.

<sup>27</sup> U.S. to Conclude Oman FTA as Early As Next Month After Two Rounds, *Inside U.S. Trade*, April 29, 2005.

<sup>28</sup> “U.S. Threatens FTA Partners in Gulf With Sanctions Over Human Trafficking.” *Daily Report for Executives*, June 6, 2005.

<sup>29</sup> For further information, see CRS Report RL32540, *The Proposed U.S.-Panama Free Trade Agreement*, by J. F. Hornbeck.

Panama was the 66<sup>th</sup> largest trading partner of the United States in 2004 with total trade of \$1.9 billion. U.S. imports of \$0.3 billion were led by shrimp, fresh fish, precious or semi-precious metals, refined petroleum, and sugar. U.S. exports in 2004 totaled \$1.6 billion and were comprised of refined petroleum, aircraft, medicaments, corn, computer parts and accessories and telecommunications equipment. In the negotiations, the United States is seeking to address high tariff levels on some agricultural products, restrictive service licensing practices, and the lack of regulatory transparency. Panama will seek greater access to its largest market, the United States, which purchased 13% of its exports in 2003 and is also seeking maritime concessions. On December 16, 2004, U.S. labor groups petitioned USTR to investigate the continued eligibility of Panama for GSP benefits, citing lack of progress in enforcing existing rights and attempts to diminish statutory labor protections.<sup>30</sup> Negotiations have focused on sensitive agricultural products, retail services, investment, and government procurement related to the Panama Canal Area.

**U.S.-Thailand FTA.** 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 began on January 9, 2006, in Chiang Min, Thailand. The White House sees potential benefits 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.<sup>31</sup> It also emphasized Thailand's importance on military, security and political issues. Thailand is the 19<sup>th</sup> largest U.S. trading partner. Two-way trade in 2004 was \$23.3 billion — \$17.5 billion in U.S. imports, \$5.8 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.

## 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. Countries would begin the process by negotiating accession to the World Trade Organization<sup>32</sup> and subsequently by concluding Bilateral Investment Treaties (BIT) and Trade and Investment Framework Agreements (TIFA) with the United States.<sup>33</sup> As domestic reforms progress, countries would then negotiate FTAs with the United States, possibly linking to other existing or planned FTAs, such as with Jordan,

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<sup>30</sup> "Labor Groups Petition USTR to Review FTA Partners' GSP Eligibility," *Inside U.S. Trade*, December 24, 2004.

<sup>31</sup> The White House. Fact Sheet on Free Trade and Thailand. October 19, 2003.

<sup>32</sup> In the Middle East region, Afghanistan, Algeria, Iran, Iraq, Libya, Lebanon, Saudi Arabia, Syria, and Yemen are not members of the WTO.

<sup>33</sup> "President Bush Lays Out Broad Plan for Regional FTA with Middle East by 2013," *International Trade Reporter*, May 15, 2003.

Morocco or Bahrain. As mentioned above, on November 15, 2004, the Administration notified Congress of its intent to negotiate an FTA with the UAE and Oman. Qatar and Kuwait have also been mentioned as a near-term FTA candidates.

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.<sup>34</sup>

**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 reached \$131.7 billion in 2004, with imports of \$87.3 billion and exports of \$44.3 billion.

**Egypt.** Egypt is the 55<sup>th</sup> largest trading partner of the United States with U.S. imports in 2004 of \$1.3 billion, exports of \$3.0 billion, and two-way trade totaling \$4.3 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 recently led to speculation that the United States would seek to launch FTA negotiations. In November 2004, a House Ways and Means Committee delegation led by 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.<sup>35</sup> In addition, discriminatory taxes on imports and poor labor rights standards have also been mentioned as impediments to an agreement.<sup>36</sup> In

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<sup>34</sup> Edward Gresser, "Blank Spot on the Map: How Trade Policy Is Working Against the War on Terror," Progressive Policy Institute, *Policy Report*, February 2003.

<sup>35</sup> House Ways and Means Committee, "Congressional Delegation to Tunisia, Jordan, Oman, and Egypt: Finding by the Delegation," November 17, 2004. [<http://waysandmeans.house.gov/media/pdf/trade/111704codelfindings.pdf>]

<sup>36</sup> "U.S. to Consider Egypt FTA After Next TIFA, Wants Further Reforms," *Inside U.S. Trade*, (continued...)

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.<sup>37</sup> In addition, the two sides reportedly have established a number of exploratory “subcommittees” to prepare for the negotiations.<sup>38</sup>

**South Korea.** Korea is the 7<sup>th</sup> largest trading partner of the United States with two-way trade totaling \$70.1 billion in 2004 — \$25.0 billion in exports and \$45.1 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. Korean and U.S. trade officials have been in exploratory talks about negotiating an FTA, and USTR Portman has indicated that a decision to negotiate would be made by the end of 2005 with the resolution of several lingering trade disputes.<sup>39</sup> These include non-tariff barriers in the auto sector, screen quotas to promote domestic Korean cinema, and continuing restrictions on U.S. beef exports. Any negotiation would likely contend with South Korea’s well protected agricultural sector. Proponents contend that an FTA would solidify South Korea’s position as an economic powerhouse and would benefit the U.S.-South Korean security relationship.

**New Zealand.** In the 109<sup>th</sup> Congress, there is some congressional interest in launching FTA negotiations with New Zealand. In February 2005, 54 House Members launched the “Friends of New Zealand Congressional Caucus” to demonstrate support for FTA negotiations. Proponents claim 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. 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.<sup>40</sup> An FTA with New Zealand may also entail tough negotiations on sensitive U.S. agriculture sectors such as beef, lamb, and sugar, although many of these issues were also under negotiation with Australia. For its part, New Zealand fears that a solo U.S.-Australian FTA would reorient U.S. trade and investment away from New Zealand towards Australia. New Zealand was the 51<sup>st</sup> largest trading partner of the United States in 2004 with two-way trade of \$4.9 billion. U.S. imports of \$2.9 billion were led by meat, dairy products, wood products, and machinery. U.S. exports of \$2.0 billion were led by machinery, aircraft and parts, electronic equipment and vehicles.

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<sup>36</sup> (...continued)  
January 14, 2005.

<sup>37</sup> “PhRMA Calls for U.S. to Oppose Egypt FTA Over IPR Violations,” *Inside U.S. Trade*, February 4, 2005.

<sup>38</sup> U.S., Egypt Set Up ‘Subcommittees’ To Lay Groundwork for Free Trade Talks, *International Trade Reporter*, July 21, 2005.

<sup>39</sup> “Portman Hopes to Launch FTA Talks with Korea, but Sticking Points Remain,” *International Trade Reporter*, November 10, 2005.

<sup>40</sup> “Zoellick Says Relationship with New Zealand Makes FTA a Challenge,” *Inside U.S. Trade*, May 23, 2003.



**Taiwan.** An FTA with Taiwan has been advanced by proponents in the last several years.<sup>41</sup> In the 108<sup>th</sup> Congress, House Majority Leader Tom DeLay lent support to an FTA with Taiwan in a speech to the American Enterprise Institute on June 2, 2003.<sup>42</sup> Taiwan is the 8<sup>th</sup> largest U.S. trading partner with total two-way trade in 2004 of \$54.8. The United States is now Taiwan's second largest trading partner after mainland China. In 2004, the U.S. imported \$34.5 billion in merchandise from Taiwan with computers, circuitry, vehicle parts, television transmission, and telecommunications equipment leading. U.S. exports to Taiwan, which totaled \$20.3 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.<sup>43</sup> 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.

## FOR ADDITIONAL READING

### *The WTO*

- CRS Report RL32053. *Agriculture in WTO Negotiations*, by Charles E. Hanrahan.
- CRS Report RL33176. *The World Trade Organization: The Hong Kong Ministerial*, coordinated by Ian F. Fergusson.
- CRS Report RL32645. *The Doha Development Agenda: The WTO Framework Agreement*, coordinated by Ian F. Fergusson.
- CRS Report RS21569. *Geographical Indications and WTO Negotiations*, by Charles E. Hanrahan.
- CRS Report RS21609. *The WTO, Intellectual Property Rights, and the Access to Medicines Controversy*, by Ian F. Fergusson.
- CRS Report RL32810. *WTO: Antidumping Issues in the Doha Development Agenda*, by Vivian C. Jones.
- CRS Report RL33085. *Trade in Services: The Doha Development Agenda Negotiations and U.S. Goals*, by William Cooper.
- CRS Report RL33144. *WTO Doha Round: Agricultural Negotiating Proposals*, by Charles Hanrahan.

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<sup>41</sup> 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.

<sup>42</sup> Available at [[http://www.aei.org/publications/pubID.17544,filter.all/pub\\_detail.asp](http://www.aei.org/publications/pubID.17544,filter.all/pub_detail.asp)].

<sup>43</sup> U.S. Trade Representative, *2005 National Trade Estimate Report on Foreign Trade Barriers*, p. pp. 591-608.

***Free Trade Area of the Americas***

CRS Report RL30935. *Agricultural Trade in the Free Trade Area of the Americas*, by Remy Jurenas.

CRS Report RS20864. *A Free Trade Area of the Americas: Major Policy Issues and Status of Negotiations*, by J. F. Hornbeck.

***Regional and Bilateral FTAs***

CRS Report RL32770. *Andean-U.S. Free-Trade Agreement Negotiations*, by Angeles Villarreal.

CRS Report RL32322. *Central America and the Dominican Republic in the Context of the Free Trade Agreement (DR-CAFTA) with the United States*, coordinated by K. Larry Storrs.

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CRS Report RL32540. *The Proposed U.S.-Panama Free Trade Agreement*, by J. F. Hornbeck.

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CRS Report RL30652. *U.S.-Jordan Free Trade Agreement*, by Mary Jane Bolle.

CRS Report RL31789. *The U.S.-Singapore Free Trade Agreement*, by Dick K. Nanto.

CRS Report RL32314. *U.S.-Thailand Free Trade Agreement Negotiations*, by Raymond J. Ahearn and Wayne M. Morrison.

***General***

CRS Report RS21554. *Free Trade Agreements and WTO Exceptions*, by Jeanne J. Grimmett and Todd Tatelman.

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CRS Report RL31974. *Trade Agreements: Requirements for Presidential Consultations, Notices, and Reports to Congress Regarding Negotiations*, by Vladimir N. Pregelj.

CRS Report RL31932. *Trade Agreements: Impact on the U.S. Economy*, by James K. Jackson.

## Trade Negotiations During the 109<sup>th</sup> Congress

(\* - Agreements Signed)

Agreement	U.S. Total Trade+ (\$ bill.)	Status	Sensitive Areas
Doha Development Agenda of the WTO	\$ 2,111.1	A work program was produced at the trade ministerial meeting in Doha in Nov. 2001. On August 1, 2004, negotiators reached a framework agreement on the conduct of future negotiations. The 6th WTO Ministerial was held at Hong Kong in December 2005.	Agriculture, industrial market access, services trade facilitation, development issues
Free Trade Area of the Americas	\$ 816.6	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.- Dominican Republic- Central America FTA (DR-CAFTA)	\$32.6	Talks were formally launched with five Central American countries on Jan. 8, 2003. An agreement was reached with four countries on Dec. 17, 2003. The fifth country joined the agreement, and the text was released, on Jan. 25, 2004. The agreement (CAFTA) was signed on May 28, 2004. Talks formally began between the United States and the Dominican Republic (DR) on Jan. 12, 2004. An agreement was reached on Mar. 15, 2004. The United States, the five Central American countries, and the DR signed the DR-CAFTA agreement on Aug. 5, 2004.  The House approved implementing legislation (H.R. 3045) on July 28, 2005 by a vote of 217-215, and later in the day, this bill passed the Senate by a vote of 55-45. The President signed the legislation on August 2 (P.L. 109-53)	Textiles and apparel, rules of origin, worker rights, agriculture, environment, IPR.
U.S.-Thailand FTA	\$23.3	The Administration officially notified Congress of its intent to negotiate an FTA on Feb. 12, 2004. Negotiations formally began on June 28, 2004.	Sugar, trucks, telecom., IPR
U.S.-Andean FTA	\$23.2 (includes \$0.4 for Bolivia)	On Nov. 18, 2003, the Administration notified Congress of its intent to begin negotiations with Colombia, Peru, Ecuador, and Bolivia. On May 18-19, 2004 the United States began FTA talks with Colombia, Peru, and Ecuador; Bolivia is observing the talks. Negotiations with Peru were concluded on December 7, 2005.	IPR, agriculture, investment
U.S.-SACU FTA	\$10.0	Talks began on June 3, 2003, and have been extended beyond the end-2004 deadline.	procurement, textiles, pharmaceuticals
U.S.-United Arab Emirates (UAE)-Oman FTA	\$5.5	On Nov. 15, 2004, the Administration formally notified Congress of the intent to begin negotiations on an FTA. Talks began the week of March 8 with the UAE and a week later with Oman. U.S. concluded talks with Oman on October 3, 2005.	Worker rights, investment, services
U.S.- Panama	\$1.9	On Nov. 18, 2003, the Administration formally notified Congress of its intent to begin negotiations with Panama. Talks began formally on Apr. 25, 2004.	Agriculture, services, maritime services
* U.S.-Bahrain FTA	\$0.7	Talks began on Jan. 26, 2004. An agreement was reached on May 27, 2004 and signed on Sept. 14, 2004. The House approved implementing legislation on December 8, 2005, the Senate approved it December 13 and the President signed it on January 11, 2006 (P.L. 109-169).	Serve as hub for Middle East FTA

+Domestic exports (Fas value) plus imports for consumption (Customs value) with countries of the proposed agreement in 2004.