

CRS Report for Congress

Trade Negotiations During the 110th Congress

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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.

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. Negotiations were concluded in 2006 with Peru, Colombia, and Panama and implementing legislation may see Congressional action in 2007. Negotiations are also actively underway with South Korea and Malaysia. 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.

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. An ongoing regional initiative is the Free Trade Area of the Americas (FTAA). 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 completion of existing negotiations has become a priority due to the looming expiration of U.S. trade promotion authority (TPA). Potential agreements resulting from current trade negotiations may be considered by Congress under TPA legislation enacted in 2002. That legislation covers agreements signed before June 1, 2007. However, the President must give a 90-day notification to Congress of his intent to sign an FTA, thus making the *de facto* deadline April 2, 2007, for reaching an agreement under TPA. 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. The upcoming expiration of TPA, and uncertainty over its possible extension or reauthorization, may provide a catalyst to complete certain agreements, and perhaps to scuttle others.

Contents

| | |
|--|----|
| Most Recent Developments | 1 |
| Background and Analysis | 1 |
| U.S. Negotiating Strategy | 2 |
| TPA Notification and Consultation Requirements | 5 |
| Before the Start of Negotiations | 6 |
| During Negotiations | 6 |
| Before Signing the Agreement | 6 |
| Entering Into the Agreement | 6 |
| Agreements Reached | 7 |
| Peru | 7 |
| Colombia | 7 |
| Panama | 8 |
| Agreements Under Negotiation | 8 |
| The WTO Doha Round | 8 |
| Free Trade Area of the Americas | 10 |
| Bilateral Negotiations | 11 |
| South Korea | 11 |
| Malaysia | 11 |
| Thailand | 12 |
| United Arab Emirates | 13 |
| Other Potential Trade Agreements | 13 |
| Middle East-North African Free Trade Agreement | 13 |
| Enterprise for ASEAN | 14 |
| Egypt | 14 |
| Taiwan | 15 |
| New Zealand | 15 |

List of Tables

| | |
|---|----|
| Free Trade Agreements Approved by Congress Under Current Trade Promotion Authority | 5 |
| Trade Negotiations During the 110 th Congress | 16 |

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Most Recent Developments

December 31, 2006: Deadline under trade promotion authority (TPA) for submission of a report to Congress by USTR identifying any proposed changes to U.S. trade remedy law in ongoing negotiations.

December 19, 2006: The United States and Panama conclude negotiations for a free trade agreement (FTA).

December 4-8, 2006: U.S. and Korean negotiators held their fifth round of FTA talks in Big Sky, Montana.

November 22, 2006: An FTA with Colombia was signed in Washington, DC.

October 30-November 2, 2006: U.S. and Malaysian negotiators held their third round of talks in Kuala Lumpur.

September 26, 2006: President Bush signed legislation implementing the U.S.-Oman FTA (P.L. 109-283).

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 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

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 More recently, former USTR Rob 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 on July 1, 2007.⁸

Some Members of Congress have questioned the manner in which potential FTA partners are chosen. Senator Baucus, ranking member of the Senate Finance Committee, criticized the Administration for overlooking high volume trading partners in Asia and has been quoted saying that "this Administration's trade policy

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

is dictated largely by its foreign policy, not by economics.”⁹ 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.¹⁰

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 insure stability.¹¹

While 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.

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 the other 149 countries of the WTO are participating in the Doha Development Agenda. Regionally, the United States has engaged with 33 other western hemisphere countries in an effort to create a Free Trade Area of the Americas. Bilaterally, the United States is conducting negotiations with South Korea, and Malaysia. Talks with Thailand and the United Arab Emirates, while on hold, have not been formally suspended. The United States conducted FTA negotiations with countries of the Southern Africa Customs Union (Botswana, Lesotho, Namibia, South Africa, and Swaziland), but these negotiations were dropped in April 2006.

In 2006, the United States concluded agreements with Peru, Colombia, and Panama. Legislation to implement these agreement likely will be considered by the 110th Congress under the timetable set forth by trade promotion authority (see below). 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, the Dominican Republic or Costa Rica.

⁹ “Baucus Proposes FTAs in Asia to Offset Chinese Influence,” *Inside U.S. Trade*, December 10, 2004.

¹⁰ “Filling Up with Appetizers,” *Congress Daily AM*, June 11, 2003.

¹¹ National Security Council, *National Security Strategy of the United States*, September 2002, [<http://www.whitehouse.gov/nsc/nss.pdf>], pp. 17-21.

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 Pending |
| 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 |

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 upcoming expiration of TPA, and uncertainty over its possible extension or reauthorization, may provide a catalyst to complete certain agreements, and perhaps to scuttle others. 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 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

¹² 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.

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.

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 Reached

Peru . On November 18, 2003, the Administration formally notified Congress of its intent to initiate negotiations for an FTA with Colombia, Peru, Ecuador, and Bolivia.¹⁴ The negotiations began on May 18-19, 2004, with Colombia, Peru, and Ecuador, but subsequently the negotiations proceeded on separate tracks.¹⁵ The United States and Peru announced a bilateral deal on an FTA on December 7, 2005, after resolving certain agriculture and intellectual property rights (IPR) issues, and the agreement was signed April 12, 2006.¹⁶ Some Members of Congress have advocated the modification of the agreements to provide additional labor safeguards. The Peruvian Congress approved FTA legislation on June 28 by a vote of 79-14. With bilateral trade totaling \$7.1 billion (\$2.0 billion in exports and \$5.1 billion in imports), Peru is the 46th largest trading partner of the United States. Many of Peru'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 June 30, 2007, and the Generalized System of Preferences (GSP). Leading imports are gold, silver, jewelry, apparel, petroleum, and copper. Prominent U.S. exports include heavy construction and drilling equipment and parts, petroleum, plastics, cellular telephony equipment, and cereal grains.

Colombia. Like Peru, negotiations with Colombia started as a regional agreement with the countries of the Andean Community, but subsequently pursued separate tracks.¹⁷ 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 is the 31st largest trading partner of the United States with bilateral trade totaling \$13.8 billion (\$5.0 billion in exports and \$8.8 billion in imports). Leading U.S. imports include petroleum, coffee, spices, apparel, cut flowers, gold, and precious and semi-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

¹⁴ In March 2005, Bolivians elected Evo Morales as President, who repudiated FTA negotiations with the United States.

¹⁵ The United States discontinued talks with Ecuador after the government seized the assets of Occidental Petroleum and cancelled its contracts in the spring of 2006.

¹⁶ For further information on this agreement, see CRS Report RS22391, *U.S.-Peru Trade Promotion Agreement*, by M. Angeles Villarreal.

¹⁷ For further information, see CRS Report RS22419, *The U.S. Colombian Trade Promotion Agreement*, by M. Angeles Villarreal.

Eradication Act (ATPDEA) (P.L.107-210), which was recently extended to June 30, 2007, and the GSP. Some members of Congress may seek greater protection of labor rights in Colombia during the debate over implementing legislation.

Panama. 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.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 Panama was the 65th largest trading partner of the United States in 2005 with total trade of \$2.3 billion. U.S. imports of \$320 million were led by shrimp, fresh fish, precious or semi-precious metals, refined petroleum, and sugar. U.S. exports in 2005 totaled \$2.0 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.

Agreements Under Negotiation

The WTO Doha Round

At the 4th 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.²⁰ 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

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, [http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2006/asset_upload_file564_10234.pdf].

²⁰ For further information, see CRS Report RL32060, *World Trade Organization Negotiations: The Doha Development Agenda*, by Ian F. Fergusson.

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.²¹ This framework had been the goal of the unsuccessful 5th Ministerial, held in Cancún, 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, 2004 deadline for completion of the round would not be met, and the framework set no new deadline.

The expiration of U.S. trade promotion authority (TPA) in July 2007 has become the *de facto* deadline for the talks. For an agreement to be considered under TPA, Congress must be notified by April 2, 2007, and must be informed of the progress of the rules negotiations by December 31, 2006. 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. At this point, the parties likely will attempt to restart the negotiations in order achieve some measure of progress in the hope that the 110th Congress may extend TPA.

The WTO’s 6th 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.²² 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 “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. Since November 2006, the Geneva-based negotiating groups have met informally, but there has been no formal “restart” to the negotiations.

²¹ 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.

²² See CRS Report RL33176, *The World Trade Organization: The Hong Kong Ministerial*, coordinated by Ian F. Fergusson.

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.²³ The United States traded \$976.7 billion worth of goods with the FTAA countries in 2005: \$399.9 billion in exports and \$576.8 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 4th 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.²⁴

²³ 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.

²⁴ GAO Report 05-168, *FTAA: Missed Deadline Prompts Efforts to Restart Stalled Hemispheric Trade Negotiations*, March 2005.

Bilateral Negotiations

South Korea. The Administration notified Congress on February 3, 2006, of its intent to begin FTA negotiations with South Korea.²⁵ The fifth round of talks were held between December 4-8, 2006, in Big Sky, Montana. South Korea is the 7th largest trading partner of the United States with two-way trade totaling \$71.5 billion in 2005 — \$27.7 billion in exports and \$43.8 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. The talks were announced after the resolution of a high-profile disputes over screen-quotas for South Korean films and restrictions on U.S. beef exports to South Korea. However, continued difficulties in shipping beef to South Korea has led to seven U.S. Senators urging the suspension of the FTA negotiations until U.S. beef exports resume.²⁶

The negotiations are contending with South Korea's well protected agricultural sector, non-tariff barriers in the automotive and other manufacturing sectors, U.S. protection of textiles and apparel, and the status of products made at the Kaesong industrial complex, an industrial zone in North Korea set up by South Korean manufacturers. Senator Max Baucus, incoming Chairman of the Senate Finance Committee, has commented that including the Kaesong complex has "the potential to sink the U.S.-Korea FTA."²⁷ In the most recent round of talks, South Korea demanded negotiations on several changes to U.S. trade remedy laws as they would apply to South Korea in return for negotiations the United States seeks on automotive and pharmaceutical trade barriers.²⁸

Malaysia. The Administration announced FTA negotiations with Malaysia on March 8, 2006. The third round of negotiations began the week of October 30, 2006.²⁹ Malaysia is the 10th largest trading partner of the United States with two-way trade totaling \$44.2 billion in 2005 — \$10.5 billion in exports and \$33.7 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.

²⁵ 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.

²⁶ Senators Chambliss, Coleman, Conrad, Leahy, Roberts, Talent, and Thomas; Letter to Ambassador Schwab and Secretary Johanns, December 13, 2006, available at [http://thomas.senate.gov/index.cfm?Fuseaction=PressReleases.View&PressRelease_id=652&Type=Press%20Release].

²⁷ "Baucus, Korean Ambassador Spar Over Tough Issues in Free Trade Pact," *International Trade Reporter*, June 22, 2006.

²⁸ "Korea Links Trade Remedy Demands to Difficult FTA Concessions," *Inside U.S. Trade*, December 15, 2006.

²⁹ For further information, see CRS Report RL33445, *The Proposed U.S.-Malaysia Free Trade Agreement*, by Dick K. Nanto.

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.³⁰ Following the first round of negotiations, the Malaysian trade minister commented that any FTA would need to take into account its development needs and to provide “adequate flexibilities and safeguards” for the liberalization of certain sectors.³¹

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.³² 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 have not been formally suspended, though they remain in limbo.³³ 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 common views with the United States with respect to ... a country’s right to police its markets effectively from predatory or illegally traded imports.”³⁴

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.³⁵ It also emphasized Thailand’s importance on military, security, and political issues. Thailand is the 19th largest U.S. trading partner. Two-way trade

³⁰ “Negative List for Services Emerges as Another Hurdle in FTA Negotiations,” *Inside U.S. Trade*, November 10, 2006.

³¹ “Malaysian Trade Minister Wants Allowances, Flexibility in Free Trade Agreement With U.S.,” *International Trade Reporter*, July 6, 2006.

³² “Health NGOs to Focus Pressure on U.S. Ahead of Next Thai FTA Talks,” *Inside U.S. Trade*, January 27, 2006.

³³ “New Thai Government Remains Committed To U.S. FTA Talks, but Wants More Oversight,” *International Trade Reporter*, October 26, 2006.

³⁴ Rep. Phil English, Letter to President Bush, June 8, 2006.

³⁵ The White House. “Fact Sheet on Free Trade and Thailand,” October 19, 2003.

in 2005 was \$23.3 billion — \$19.9 billion in U.S. imports, \$7.2 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.³⁶

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 during 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 2005, the United States imported \$1.5 billion from the UAE and exported \$8.5 billion to the emirates. 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.³⁷ Countries would begin the process by negotiating accession to the World Trade Organization³⁸ and subsequently by concluding Bilateral Investment Treaties (BIT) and Trade and Investment Framework Agreements (TIFA) with the United States.³⁹ 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.

³⁶ For further information, see CRS Report RL32314, *U.S.-Thailand Free Trade Agreement Negotiations*, by Raymond J. Ahearn and Wayne M. Morrison.

³⁷ For further information, see CRS Report RL32638, *Middle East Free Trade Area: Progress Report*, by Mary Jane Bolle.

³⁸ 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.

³⁹ "President Bush Lays Out Broad Plan for Regional FTA with Middle East by 2013," *International Trade Reporter*, May 15, 2003.

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.⁴⁰

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 \$148.5 billion in 2005, consisting of imports of \$98.9 billion and exports of \$49.6 billion.

Egypt. Egypt is the 54th largest trading partner of the United States with U.S. imports in 2005 of \$2.1 billion, U.S. exports of \$3.2 billion, and two-way trade totaling \$5.3 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 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 negotiations.⁴¹ In November 2004, a House Ways and Means Committee delegation led by former Chairman Bill 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.⁴² In addition, discriminatory taxes on imports and poor labor rights standards have also been mentioned as impediments to an

⁴⁰ Edward Gresser, "Blank Spot on the Map: How Trade Policy Is Working Against the War on Terror," Progressive Policy Institute, *Policy Report*, February 2003.

⁴¹ U.S., Egypt Set Up 'Subcommittees' To Lay Groundwork for Free Trade Talks, *International Trade Reporter*, July 21, 2005.

⁴² 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>]

agreement.⁴³ 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.⁴⁴ The United States has reportedly suspended consideration of an FTA with Egypt due to continuing human rights issues, including the imprisonment of a presidential candidate in the 2005 elections and concerns over the treatment of Sudanese refugees.⁴⁵

Taiwan. An FTA with Taiwan has been advanced by proponents in the last several years.⁴⁶ In the 109th Congress, two concurrent resolution (H.Con.Res. 342 [Andrews]; H.Con.Res. 346 [Ramstad]) were introduced in February 2006 calling for the negotiation of an FTA with Taiwan. Taiwan is the 8th largest U.S. trading partner with total two-way trade in 2005 of \$56.9 billion. The United States is now Taiwan's second largest trading partner after mainland China. In 2005, the United States imported \$34.9 billion in merchandise from Taiwan with computers, circuitry, vehicle parts, television transmission, and telecommunications equipment leading. U.S. exports to Taiwan, which totaled \$22.0 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.⁴⁷ 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.

New Zealand. 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. 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

⁴³ "U.S. to Consider Egypt FTA After Next TIFA, Wants Further Reforms," *Inside U.S. Trade*, January 14, 2005.

⁴⁴ "PhRMA Calls for U.S. to Oppose Egypt FTA Over IPR Violations," *Inside U.S. Trade*, February 4, 2005.

⁴⁵ "Free Trade Talks with Egypt Put on Hold Pending Progress on Political, Other Issues," *International Trade Reporter*, January 26, 2006.

⁴⁶ 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.

⁴⁷ U.S. Trade Representative, *2005 National Trade Estimate Report on Foreign Trade Barriers*, pp. 591-608.

war.⁴⁸ 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 the solo U.S.-Australian FTA will reorient U.S. trade and investment away from New Zealand towards Australia. New Zealand was the 53rd largest trading partner of the United States in 2005 with two-way trade of \$4.9 billion. U.S. imports of \$3.2 billion were led by meat, dairy products, wood products, and machinery. U.S. exports of \$2.9 billion were led by machinery, aircraft and parts, electronic equipment and vehicles.

Trade Negotiations During the 110th Congress

| Agreement | U.S. Total Trade ⁺ (\$ bill.) | Status | Sensitive Areas |
|------------------------------------|--|--|---|
| Doha Development Agenda of the WTO | \$ 2,513.0 | 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 6th WTO Ministerial was held at Hong Kong in December 2005. Talks suspended on July 24, 2006. | Agriculture, industrial market access, services, trade facilitation, development issues |
| Free Trade Area of the Americas | \$ 976.7 | 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 | \$71.5 | Administration notified Congress of intent to begin negotiations on Feb. 3, 2006. Fifth round held Dec. 4-8, 2006. | Agriculture, automobiles, non-tariff barriers, trade remedies |
| U.S.-Malaysia | \$44.2 | Administration notified Congress of intent to begin negotiations on March 8, 2006. Third round held Oct. 30- Nov. 3, 2006. | Financial services, autos, IPR, gov. procurement. |
| 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. Last negotiating round in January 2006. | Sugar, trucks, telecommunications IPR |
| U.S.-Colombia | \$13.8 | Negotiations began May 2004; Negotiations concluded on Feb. 27, 2006, and President notified Congress on Aug. 24, 2006 of intent to sign FTA. | Agriculture, labor, IPR |
| U.S.-United Arab Emirates | \$8.5 | 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.-Peru | \$7.1 | Negotiations with were concluded with Peru on Dec. 7, 2005 and signed on Apr. 12, 2006. | Agriculture, labor, IPR |
| U.S.- Panama | \$2.3 | 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. | Agriculture, services, maritime services |

Source: Congressional Research Service

+Domestic exports (Fas value) plus imports for consumption (Customs value) with countries of proposed agreement in 2005.

⁴⁸ “Zoellick Says Relationship with New Zealand Makes FTA a Challenge,” *Inside U.S. Trade*, May 23, 2003.