OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

MEMORANDUM FOR NEW SENATORS

From: Democratic Trade Staff, Senate Finance Committee

Date: November 5, 2008

Re: Trade Issues in the 111th Congress

Congratulations and welcome to the Senate. For your background, we have prepared an overview of the key trade issues that will likely arise in the 111th Congress.

Senator Baucus has emphasized that his Finance Committee staff should serve as a resource for the entire Senate. We are always available to meet with you or your staff about any trade issue of interest to you – both now and throughout your tenure in the Senate. We can be reached at the following extensions:

Demetrios Marantis, Chief International Trade Counsel	4-7909
Amber Cottle, International Trade Counsel	4-6460
Ayesha Khanna, International Trade Counsel	4-4351
Janis Lazda, International Trade and Economic Advisor	4-0799
Hun Quach, International Trade Analyst	8-4226
Chelsea Thomas, International Trade Analyst	4-4492
Darci Vetter, International Trade Advisor	4-2532

This document is meant to provide you with factual background rather than advocate in favor of any particular position. It has not been officially approved by the Committee and may not reflect the views of its Members.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Table of Contents

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Trade Adjustment Assistance

The Trade Adjustment Assistance programs ("TAA") provide assistance to workers, firms, and farmers that are adversely affected by trade. TAA is premised on the notion that the benefits of trade are diffuse, while the harms, although smaller in absolute terms, tend to be concentrated.

TAA consists of three programs: TAA for Workers, TAA for Firms, and TAA for Farmers and Fishermen. TAA for Workers is the largest of the three programs and is the main focus of the TAA debate. It provides retraining and other assistance to workers in the manufacturing sector who lose their jobs due to trade. In order to qualify, a worker must demonstrate that his or her job loss is related to (1) an increase in imports; (2) a shift in production from the United States to another country that is a party to a U.S. free trade agreement ("FTA") or is a recipient of certain trade preferences; or (3) a trade-related closure of a facility to which the worker provided inputs. Eligible workers can receive up to two years of retraining, income support payments at the state unemployment insurance level for the duration of their training, a 65 percent advanceable and refundable health insurance tax credit, and job search and relocation allowances. And workers over the age of 50 may participate in the "alternative TAA," or "wage insurance," program, which allows older workers to return to the workforce and receive 50 percent of the difference between the wages in their old job and the wages in their new job in lieu of the retraining benefits under the standard TAA for Workers program.

The TAA for Firms program provides technical assistance to trade-affected firms to help them remain competitive in the changing international economy and to prevent layoffs altogether. Similarly, the TAA for Farmers and Fishermen program provides agricultural producers and fishermen technical assistance to help them adjust to import competition, including improving competitiveness in producing and marketing the import-affected commodity and possibly shifting to an alternative commodity.

Authorization for the three TAA programs expired on December 31, 2007 when Congress failed to extend them. The TAA for Workers and TAA for Firms programs continue to operate through funding in the FY2008 and FY2009 appropriations bills, but the TAA for Farmers and Fishermen program was not funded and has ceased operations.

Senators Baucus and Snowe introduced a bill (S. 1848) in the 110th Congress to reauthorize all three TAA programs. The bill also proposed to expand TAA by (1) extending its benefits to services workers; (2) extending its benefits to workers whose jobs shift to non-FTA partner countries; (3) doubling retraining funds; (4) raising the health insurance tax credit to 85 percent; and (5) creating a new TAA for Communities program. The bill also proposed changes to make training, health care, and wage insurance benefits more accessible and flexible. Congressman Rangel introduced a similar bill (H.R. 3920) during the 110th Congress, which passed the House in October 2007.

The Senate likely will consider a TAA reauthorization bill early in the 111th Congress.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Trade Enforcement

The administration has a variety of tools at its disposal to enforce our trade agreements abroad and our domestic trade remedy laws here at home. Many argue, however, that these tools are outdated and underutilized. We have summarized the principal enforcement tools under existing law below, along with several legislative proposals to beef up those tools that were introduced in the 110th Congress and may be reintroduced next year.

A. Enforcement of Trade Agreements Abroad

World Trade Organization ("WTO") Dispute Settlement. The WTO includes a mechanism to settle disputes between WTO members that arise under the WTO agreements. The United States has been very successful in the WTO cases it has filed. By contrast, it has lost certain challenges brought by trading partners, notably against U.S. trade remedy laws. The Office of the U.S. Trade Representative ("USTR") has filed some significant cases in the last two years, including cases against Chinese subsidies and intellectual property ("IP") violations. But the current administration has been criticized for not bringing enough such cases.

In an effort to address these concerns, Senators Baucus, Hatch, and Stabenow introduced a bill (S. 1919) in the 110th Congress that requires USTR to provide an annual report to Congress identifying the most significant barriers to U.S. companies abroad and to take enforcement action to resolve them. It also provides a new role for Congress in establishing enforcement priorities. By majority vote, the Senate Finance or House Ways & Means Committees could require USTR to identify specific market access barriers in its report. The bill also creates a Senate-confirmed Chief Enforcement Officer at USTR to investigate and prosecute trade enforcement cases.

Special 301. Section 182 of the Trade Act of 1974, known as "Special 301," requires USTR to annually identify countries that deny adequate IP protection. Countries with the worst practices are designated as "Priority Foreign Countries," which subjects them to investigation and possible sanctions. USTR has also created lower level designations, known as the "Watch List" and the "Priority Watch List," for countries with less severe IP problems. Special 301 has been helpful in spotlighting countries that deny adequate IP protection. But critics have questioned whether this tool can be made more effective, particularly with respect to the lower level designations, which do not impose sanctions under current law.

Senators Baucus and Hatch introduced a bill (S. 3464) in the 110th Congress to address these concerns. The bill requires USTR to develop an action plan for each country that has remained on the lower level "Priority Watch List" for at least one year. The action plan would list the steps that the foreign country must take in order to improve its IP protection. If a foreign country has not complied with its action plan within one year, the bill authorizes the President to take various enforcement actions against the country. These actions include (1) prohibiting federal government procurement from the foreign country; (2) prohibiting new financing by the Overseas Private Investment Corporation and the Export-Import Bank of the United States with respect to projects in, or exports to, the foreign country; and (3) withdrawing any preferential treatment for which the foreign country qualifies under U.S. preference programs.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

B. Enforcement of Domestic Trade Remedy Laws

Antidumping Laws. Title VII of the Tariff Act of 1930 authorizes the imposition of antidumping duties on imported goods when (1) the Department of Commerce ("Commerce") determines that the goods are being "dumped," i.e., sold at a lower price in the United States than in the foreign country that exports the goods; and (2) the International Trade Commission ("ITC") determines that the domestic industry is materially injured or threatened with material injury as a result of those imports. Under existing law, antidumping duties are deposited in a general Treasury fund. Various legislative proposals have been introduced over the years, however, that would require the duties to be provided, in part, to the injured domestic industry. One such proposal, known as the "Byrd Amendment," was enacted in 2000. It was repealed in 2005, however, after a WTO dispute settlement panel concluded that it was inconsistent with the WTO agreements and authorized other WTO members to retaliate against the United States by imposing increased duties on U.S. exports. Some domestic interests have since pushed for Congress to re-enact this measure.

Countervailing Duty Laws. Title VII of the Tariff Act of 1930 also authorizes the imposition of countervailing duties on imported goods when (1) Commerce determines that the goods have been subsidized by a foreign government; and (2) the ITC determines that the domestic industry is materially injured or threatened with material injury as a result of those imports. One of the biggest issues currently facing Congress in this area is whether to authorize the application of countervailing duties to non-market economies like China. Commerce, until recently, had refused to apply countervailing duties to non-market economies. Commerce reversed its long-standing policy in 2006, however, and has applied countervailing duties to China in several recent cases. Although this decision was applauded, many Members have indicated that they do not want to leave this issue to the administration's discretion and have introduced legislation that would explicitly authorize the application of countervailing duties to non-market economies. Provisions on this issue were included in bills introduced by Senator Baucus (S. 1919) and Senator Rockefeller (S. 364) in the 110th Congress.

Section 421 China Safeguard. When China joined the WTO, its accession package included a safeguard mechanism that allows WTO members to place limits on Chinese imports that cause or threaten to cause market disruption to their domestic industries. When Congress subsequently granted permanent normal trade relations status to China, it created Section 421, which implements the China-safeguard mechanism in U.S. law. Section 421 was key to many Congressional Members' support for the bill to grant China permanent normal trade relations status. The Bush Administration has been criticized, however, for failing to use this remedy. U.S. industries have thus far filed six section 421 petitions. Although the ITC found that relief was warranted in four of those cases, the President invoked the statute's waiver provisions and refused to provide relief in each case. Several bills have been introduced, including by Senators Baucus (S. 1919) and Rockefeller (S. 364), to limit the President's statutory waiver authority.

OBAMA-BIDEN TRANSITION PROJECT

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

China Textile Safeguard. China's WTO accession package also included a special textile safeguard in order to give domestic industries time to adjust to Chinese textile imports. Under this provision, the United States and other WTO members may impose a one-year quota on textile and apparel products upon a showing of "market disruption." Use of these safeguards during 2005, however, generated significant opposition domestically from U.S. consumers of Chinese textile imports and also increased bilateral friction with China. As an alternative to the *ad hoc* use of the textile safeguard, the United States and China signed a broad textile agreement on November 8, 2005 that established limits on 34 textile and apparel products. The agreement will govern textile trade between the United States and China until December 31, 2008 when the WTO special safeguard provision expires. The domestic textile industry may seek renewal of this agreement or other action to limit Chinese textile imports during the next Congress.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Customs Reauthorization

Prior to 2002, the U.S. Customs Service's primary duty was to collect duties and facilitate trade. The Homeland Security Act of 2002 transferred the Customs Service to the new Department of Homeland Security ("DHS"), which then split the Customs Service's responsibilities into U.S. Customs and Border Protection ("CBP") and U.S. Immigration and Customs Enforcement ("ICE").

CBP now has the dual mission of securing our borders and facilitating trade. CBP's trade facilitation responsibilities include processing people and goods across our borders, collecting import duties, clearing cargo for entry, seizing illegal shipments such as counterfeit goods and drugs, and collecting duties associated with antidumping and countervailing duty orders. CBP is also responsible for inspecting goods for compliance with U.S. trade agreements and for enforcing the regulations of other federal agencies, including the Consumer Product Safety Commission, the Food and Drug Administration, and the National Highway Traffic Safety Administration.

ICE is responsible for investigating and uncovering ongoing trade violations and smuggling operations. ICE places particular emphasis on halting the flow of counterfeit goods into the United States and pursuing illegal proceeds derived from those sales. ICE generally is not present at the ports of entry, but it receives referrals from CBP on suspect entries. It also self-initiates investigations and has the authority to investigate IP violations.

DHS and the Department of Treasury share oversight of CBP and ICE. DHS allocates resources to the trade-related functions carried out by CBP and ICE. But the Department of Treasury maintains oversight of many of the trade-related policies implemented by CBP and ICE, including regulations concerning duty assessment and collection, copyright and trademark enforcement, and import bans. As a result, the Senate Finance Committee retains jurisdiction over the commercial operations, revenue collection, and trade facilitation and enforcement functions of CBP and ICE.

Many have argued that CBP and ICE have prioritized their security mission to the detriment of their trade facilitation mission. A key issue for the 111th Congress will be whether and how to rebalance these missions. The debate likely will be concentrated on three tasks: (1) refocusing the agencies to prioritize their trade mission; (2) providing the manpower and resources necessary to facilitate trade; and (3) making technical corrections to improve customs operations. These and other issues relating to import health and safety, enforcement, security, and competitiveness will likely be raised in the context of a customs reauthorization bill that Senators Baucus and Grassley expect to introduce early in the 111th Congress.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

<u>"Fast Track" or "Trade Promotion Authority"</u>

The fast-track procedures in the 2002 Trade Promotion Authority Act ("TPA") expired on June 30, 2007. The question of whether and how to enact renewed fast-track legislation likely will be a prominent issue in the trade debate during the next Congress.

A. Overview

Fast track entails a grant of authority from Congress to the administration that facilitates the negotiation and congressional consideration of certain trade agreements. In most, if not all, other countries around the world, authority over international trade rests with the executive. The United States is different – Article I, Section 8 of the U.S. Constitution gives Congress the power to "regulate commerce with foreign nations." Our trading partners, however, historically have not wanted to negotiate trade agreements with the 535 Members of Congress, and they have been reluctant to conclude trade agreements with the United States that Congress subsequently could amend.

Congress has therefore delegated its constitutional authority over trade agreements to the executive branch on several occasions over the years, most recently as part of TPA in 2002. In TPA, Congress agreed to consider trade agreement implementing bills within mandatory deadlines, with a limitation on debate, and without amendment, so long as the President meets TPA's negotiating objectives and consultation requirements.

B. Fast-Track Procedures

The underlying purpose of fast-track is to promote Legislative-Executive consultation and cooperation both before and after a trade agreement is negotiated. During the negotiation process, the administration – represented by USTR – typically has the lead. USTR and other administration staff conduct regular briefings with congressional staff on the content and status of the negotiations. The administration also sends draft negotiating texts to Congress for review by appropriate congressional staff with security clearances. The President must then notify Congress of his intent to sign a trade agreement at least 90 calendar days before doing so.

Once the President concludes and signs a trade agreement, the locus of activity shifts to Congress, which must consider and pass legislation to implement the changes to U.S. law that the trade agreement requires. Congressional consideration of the implementing bill typically includes two tracks: an informal (or "mock") track and a formal track.

Track 1: The "Mock" Process. TPA requires the administration to consult with the Finance and Ways & Means Committees, but the precise nature of the mock process described below is not statutorily mandated. The mock process has developed as a means to give Congress input on the contents of a trade agreement implementing bill before the administration submits the final version of the bill, which is not amendable under fast-track rules.

- <u>Hearings</u>. Once a trade agreement is signed, the Senate Finance and House Ways & Means Committees typically hold hearings on the agreement and on proposals for implementing legislation.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

- Mock Markups. After the hearings, the Finance and Ways & Means Committees typically conduct separate "mock" markups of a draft bill to implement the trade agreement. A mock markup proceeds exactly as a normal markup, with Members offering and voting on amendments followed by a vote on the draft text, as amended. The draft text that emerges from the mock markups then serves as a recommendation to the administration on the contents of the final implementing bill that it formally submits under TPA.

- Mock Conference. If the draft text that emerges from the two Committees differs, the draft bill typically has gone to a mock conference to allow the two chambers to reconcile their differences and prepare a joint recommendation to the President. On two recent occasions, however, this process was not followed. The two Committees approved different versions of the draft implementing bills of the Dominican Republic-Central America FTA ("DR-CAFTA") and the Oman FTA. But over the protest of Democratic Members, mock conferences were not held in either case.

Track 2: The "Formal" Process

After the mock process, the President submits the final implementing bill to Congress, along with the text of the trade agreement, the Statement of Administrative Action, and other supporting materials, on a day on which both the House and Senate are in session. There is no statutory deadline for when the President must submit the bill.

Once the President does submit the bill, and the Majority and Minority Leaders of each House (or their designees) introduce the bill, the fast-track clock begins. Congress then has 90 *session* days to complete its consideration of the legislation, divided as follows: 45 days for House committee action; 15 days for House floor action; 15 days for Senate committee action; and 15 days for Senate floor action. The implementing bill, once introduced, is not amendable either by the committees of jurisdiction or on the floor.

During the time periods for committee action, the Ways & Means and Finance Committees hold formal markups and report out the bill. If the Committees do not report the bill by their specified deadlines, they are discharged and the bill moves directly to the floor. Debate on the Senate floor is limited to 20 hours, after which there must be an up or down vote.

C. Fast-Track Agreements

Congress has considered several trade agreements under TPA – bilateral agreements with Singapore, Chile, Australia, Morocco, Bahrain, Oman, and Peru, as well as the DR-CAFTA regional agreement. TPA's fast-track procedures also apply to the pending FTAs with Colombia, Panama, and Korea because those agreements were signed before TPA expired in June 2007. *(For more information on the application of fast-track procedures to the Colombia FTA, which some have questioned, please see the "Free Trade Agreement" section of this memorandum*).

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

D. Fast-Track Renewal

The next administration may push for fast-track renewal in the 111th Congress. This effort could take a variety of forms. The administration may, for example, seek a short-term fast-track renewal to complete specific ongoing trade initiatives, such as the pending WTO Doha Round negotiations. The administration may also seek a more long-term fast-track renewal to negotiate new trade agreements during the next four years. Either case will generate significant debate. Some Members likely will seek language requiring USTR to include more rigorous labor and environmental provisions in future trade agreements along the lines of the May 10 trade deal. Some Members also may seek to statutorily mandate the informal "mock" fast-track process in order to prevent the next President from bypassing this process, as President Bush did with respect to the Colombia FTA. (*For more information on the May 10 trade deal and Congressional consideration of the Colombia FTA during the 110th Congress, please see the "Free Trade Agreement" section of this memorandum*). And some Members also may seek strengthened consultation procedures to better account for congressional priorities in both the trade agreements themselves and in the implementing legislation.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Free Trade Agreements

The United States has negotiated and approved bilateral FTAs with Israel, Jordan, Singapore, Chile, Australia, Morocco, Bahrain, Oman, and Peru, as well as regional FTAs with Canada and Mexico (the North American Free Trade Agreement, or "NAFTA") and with the DR-CAFTA countries – the Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. With the exception of the Jordan FTA, which passed the Senate by unanimous consent, Congress considered all of these FTAs pursuant to fast-track procedures.

Three additional FTAs are pending for Congressional consideration – with Colombia, Panama, and Korea. And two additional FTAs are under negotiation – a bilateral agreement with Malaysia and a regional agreement with the "Pacific Four" (or "P-4") countries of Chile, Singapore, New Zealand, and Brunei. Congress may consider legislation to implement these FTAs during the 111th Congress, and potentially also could consider legislation to amend the NAFTA. We discuss all of these FTAs below, as well as the "May 10 trade deal" that applies to the three pending FTAs.

A. May 10 Trade Deal

On May 10, 2007, Congress and the administration agreed on a package of changes to the then pending FTAs with Peru, Colombia, Panama, and Korea. The deal required changes to the labor, environment, IP, services, investment, and procurement provisions of those FTAs. The changes were designed to address key Democratic trade priorities, especially regarding labor and the environment, as a way of expediting congressional consideration of the pending FTAs. The Bush Administration and leading congressional Republicans have been frustrated, however, that Congress has only enacted the Peru FTA since the May 10 deal, and not the FTAs with Colombia, Panama, and Korea.

The May 10 changes are as follows:

Labor. The May 10 deal requires the United States and its pending FTA partners to adopt and maintain domestic laws to implement the five core International Labor Organization ("ILO") standards incorporated in the 1998 ILO Declaration: (1) the right to organize; (2) the right to bargain collectively; (3) prohibitions on forced labor; (4) protections for child labor; and (5) freedom from employment discrimination. These obligations are enforceable through the same dispute settlement mechanism that applies to all other FTA obligations. In order to demonstrate a violation, the complaining country would have to prove that the other country failed to effectively enforce one of the five obligations in a manner that affected trade or investment between the countries.

Environment. The deal also requires the United States and its pending FTA partners to adopt and maintain domestic laws to implement the obligations in seven specified multilateral environmental agreements – such as the Convention on International Trade in Endangered Species (or "CITES") and the Montreal Protocol on Ozone Depleting Substances – if both FTA parties are parties to such agreements. As with labor, these obligations are enforceable through the same dispute settlement mechanism that applies to other FTA obligations, and the complaining country would have to prove that the other country failed to effectively enforce an obligation in a manner that affected trade or investment.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Intellectual Property. The deal requires four changes to the patent provisions of the FTAs to ensure access to generic medicines in developing countries. The first three changes outlined below apply only to Peru, Colombia, and Panama, while the fourth applies to those three plus Korea. The four changes are as follows:

- First, the deal shortens the "data exclusivity" provisions. The FTAs previously provided that countries must protect, for a five-year period, the confidentiality of the data that pharmaceutical companies submit when they seek marketing approval of their drugs. The May 10 deal provides that if the country relies in part on marketing approval granted by the United States, as is often the case in developing countries, then the five-year period runs from the date the drug was approved in the United States, not from the date that the drug was approved in the developing country.

- Second, the deal revises the patent extension provisions. The FTAs previously provided that a country "shall" extend the term of a patent to compensate for any unreasonable delays in the country's approval process. The May 10 deal changes the "shall" to "may" with respect to pharmaceutical patents.

- Third, the deal deletes the "linkage" provisions. The FTAs previously provided that each country must withhold approval of a generic drug until it can certify that the drug is not subject to any patents. The May 10 deal instead requires patent holders to bring an enforcement action in that country's court system if it believes that the generic drug infringes its patents.

- Fourth, the deal incorporates the text of the WTO "Doha Declaration" into the FTAs. The Doha Declaration provides that the WTO's patent provisions do not prevent WTO members from taking actions to address public health crises. The May 10 deal clarifies that the FTAs' patent provisions do not prevent the FTA parties from taking actions that are consistent with the Doha Declaration.

Government Procurement. The May 10 deal revises the government procurement provisions of pending FTAs to clarify that countries may require government contractors to comply with certain fundamental labor principles.

Port Security. The FTAs previously committed the United States to provide access to certain "landside" activities at U.S. ports, including operation and maintenance of docks and loading and unloading of vessels. The May 10 deal revises pending FTAs to clarify that this "landside port" commitment is subject to the FTA's essential security exception. In other words, the FTAs now explicitly provide that the United States can refuse access to our ports if we deem such action necessary to protect our national security.

Investment. The May 10 deal amended the pending FTAs to include language in the preamble clarifying that foreign investors in the United States will not be accorded greater substantive rights than U.S. investors in the United States. This language is taken verbatim from the negotiating objectives in TPA.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

B. Colombia

The Colombia FTA is the only pending FTA for which the Bush Administration has submitted implementing legislation to Congress. We have summarized the rather complicated procedural history of this FTA below, as well as the controversy this FTA has generated over labor issues.

Procedural History. The United States and Colombia signed the original version of this FTA on November 22, 2006, and they signed amendments to the FTA that reflected the changes required by the May 10 deal on June 28, 2007. The Colombian legislature has ratified both the original FTA and the May 10 changes. The FTA now awaits approval by the U.S. Congress.

TPA's fast-track procedures apply to all FTAs, like Colombia, that were signed before TPA expired on June 30, 2007. President Bush submitted the Colombia FTA implementing bill to Congress on April 8, 2008, which started the 90 day fast-track clock for Congressional consideration of the bill. For the first time ever in the consideration of an FTA, however, the President took this action without reaching an agreement with Congressional leadership on the timing of the submission. And for the first time ever, the President took this action before the Finance and Ways & Means Committees held hearings or a "mock markup" of the implementing bill. (*For more details on fast-track procedures, please see the "Fast Track" section of this memorandum*.)

In response, the House passed a resolution on April 10, 2008, that eliminated fast-track timelines for House consideration of the bill. This essentially means that Speaker Pelosi can schedule the House vote at a time of her choosing. As with the President's action, there is no precedential analog for the Speaker's action. Neither House has ever withdrawn application of fast-track from an FTA bill.

The Bush administration has expressed its hope that Congress consider the Colombia FTA implementing bill during the lame duck session of Congress later this year. If the bill is not considered in the lame duck, however, it will die at the end of this Congress and would need to be resubmitted by the next administration. If the bill is resubmitted, the Senate Parliamentarian has advised that fast-track procedures would apply to Senate consideration of the bill in the 111th Congress provided that the House makes no changes to the bill after it is introduced.

Labor Concerns. Whenever the bill is considered, it undoubtedly will be controversial. Many Members question whether Colombia has done enough to prosecute the perpetrators of violence against labor leaders. Murders of union members declined 80 percent between 2001 and 2007, but the AFL-CIO has reported an uptick this year, with 41 murders to date in 2008. To address the concerns about prosecutions, Colombian President Uribe established a special unit in 2006 to investigate and prosecute violence against union members. The unit has secured 70 convictions, which some analysts have said is a remarkable number in less than two years. But these convictions make only a small dent in the backlog of nearly 1300 cases. And even with these convictions, the impunity rate for union murders is 97 percent.

Some Members have also questioned whether Colombia adequately protects labor rights. Colombia has ratified all eight of the ILO's fundamental conventions and has strengthened its labor rights laws, including removing restrictions on collective bargaining and improving protections against child labor. But U.S. unions argue that Colombia still needs to improve protections for cooperative workers and remove limits on public sector strikes.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

C. Panama

The United States and Panama signed an FTA on June 28, 2007, that contains the expanded labor, environmental, and other provisions in the May 10 deal. Panama's National Assembly ratified the FTA on July 11, 2007, but it has not yet been considered by the U.S. Congress. Industry and agricultural groups support the FTA, and it has generated little opposition from labor groups. But Congressional consideration of the FTA became complicated by Panamanian politics. Pedro Miguel Gonzalez was elected head of Panama's National Assembly in September 2007. Gonzalez, a member of the ruling PRD Party, is believed responsible for the murder of a U.S. serviceman in 1992. Gonzalez stood trial in Panama for the murder, but was acquitted in what was widely viewed as a corrupt proceeding. Gonzalez's actions, the circumstances of his acquittal, and his election to lead the National Assembly raised serious questions for many Members. In September 2008, however, Gonzalez stepped down as head of the National Assembly. Although this removed a major obstacle to Congressional consideration of the FTA, the timing of a vote on the FTA remains uncertain. As with Colombia, the Bush Administration may seek passage of the Panama FTA during the lame duck session. Given that the Panama FTA was signed before TPA expired, fast-track procedures will apply regardless of whether the bill is submitted during the lame duck session or during the next Congress.

D. Korea

The United States and Korea signed an FTA on June 30, 2007 that contains the provisions of the May 10 trade deal. Korea is our seventh largest trading partner, and the FTA would be the most commercially significant U.S. agreement since NAFTA. The FTA offers opportunities for the United States to strengthen its economic position in Asia. And it offers significant new opportunities for U.S. industries, especially for exporters of pharmaceuticals and insurance, financial, and telecommunications services. Nevertheless, a number of controversial issues persist that will complicate consideration of this FTA in the 111th Congress.

Beef. From the launch of the FTA talks to the negotiations' final hours, agriculture issues proved controversial and difficult to resolve. Korea closed its border to U.S. beef in December 2003 after a case of bovine spongiform encephalopathy ("BSE") was discovered in a cow in Washington State. While technically not part of the FTA negotiations, resumption of beef exports to Korea was a key U.S. objective during the talks. Senate Finance Committee Chairman Max Baucus was an early champion of the FTA, but conditioned his support on the resumption of U.S. beef exports.

After years of false starts, an agreement to resume U.S. beef imports was finally reached in April 2008. But it became clear shortly after the deal was announced that key domestic constituencies did not support the deal cut by newly-elected Korean President Lee Myung-bak. Opposition parties seized on President Lee's perceived missteps and stirred up protest. Misinformation about the safety of U.S. beef on Korean television and the internet swelled the number of protesters to 200,000 by June, eventually forcing President Lee to back away from the deal. American and Korean negotiators later agreed to amend the April 2008 deal by granting more limited access to the Korean beef market in the short term, with the goal of full market access in the future. Since this agreement, U.S. beef exports have been flowing to Korea, and they approached pre-2003 levels in August. (*For more information on U.S. beef exports to Korea, please see the "Beef Trade" section of this memorandum.*)

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Rice. Increasing U.S. rice exports to Korea was also a key objective in the FTA negotiations. The Korean government maintains a policy of self sufficiency in rice production and subsidizes its farmers. Domestic rice production is also part of the Korean national identity, and many remember the severe rice shortages in the first half of the 20th century. For all of these reasons, the United States ultimately failed to win additional market access for rice during the FTA negotiations. U.S. rice producers have announced that they oppose the agreement as a result.

Automobiles. In addition to agriculture, exports of U.S. autos and other manufactured goods to Korea remain a controversial issue. The auto trade between the United States and Korea is highly asymmetric: about 54 Korean cars are exported to the United States for every U.S. car exported to Korea. U.S. auto exporters blame a web of non-tariff barriers, including discriminatory taxes and auto standards, for its small share of the Korean market. To address these concerns, the FTA eliminates discriminatory taxes and existing tariffs, and creates a working group on auto standards. And a "snap-back" provision in the FTA would reimpose U.S. tariffs on Korean autos if Korea violated its commitments to open its auto sector.

Some auto companies, the United Auto Workers, and key Congressional Members oppose the FTA's auto provisions as negotiated. Some of these groups proposed a "performance metric" that would delay U.S. auto tariff concessions pending implementation and evaluation of Korea's auto market liberalization. The proposal was rejected by U.S. trade negotiators, however, and never tabled with Korea. Other U.S. manufactured goods exports – including appliances – have experienced a history of non-tariff barriers in Korea similar to the auto industry.

Kaesong. Another area of potential controversy is the Kaesong Industrial Complex, a zone in North Korea where fifteen South Korean factories employ 20,000 North Korean workers. The FTA includes a provision creating a committee to study the possibility of adding "Outward Processing Zones" like the Kaesong area to the scope of the FTA's coverage in the future. Trade with Kaesong raises a number of concerns, however, including the treatment and compensation of North Korean labor. But any decision to add Kaesong to the scope of the FTA would require Congressional approval. And the newly-elected Lee administration, which takes a decidedly cooler view toward North Korea than its predecessor, is not likely to pursue the addition of Kaesong in any event.

E. Malaysia

The United States launched FTA negotiations with Malaysia – our 10th largest trading partner – in March 2006. While the beef, auto, and rice issues that dogged the Korea FTA talks were not a problem, Malaysia presented another unique set of challenges. Primary among them was Malaysia's "bumiputera" policies – a system of economic and social preferences for native Malays. The policies presented significant challenges for negotiators, as did U.S. attempts to liberalize Malaysia's financial services sector. For these and other reasons, the talks broke down in April 2007.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

In December 2007, Malaysia signaled interest in restarting talks. Informal discussions began in January 2008, and a formal round of talks occurred in July. Malaysia's renewed interest is due in part to its changing domestic politics. The National Front coalition that has ruled Malaysia for over five decades and strongly supports the bumiputera policies is just a few dozen votes away from losing power. And National Front Prime Minister Abdullah Ahmad Badawi announced his resignation for next spring, four years before his term expires. Analysts believe that the new political dynamic gives Malaysian negotiators more flexibility but may also undermine their negotiating mandate. Given that TPA has expired, fast-track procedures would not apply to any concluded agreement unless and until Congress passes renewed fast-track legislation granting the agreement such treatment.

F. Pacific Four or Trans-Pacific Agreement

In 2005, New Zealand, Brunei, Singapore, and Chile signed a regional FTA known as the P-4 Agreement. In September 2007, USTR began an exploratory process to determine whether to join the Agreement. In February 2008, USTR began financial services and investment negotiations with the P-4. And in September 2008, the United States and the P-4 countries announced the launch of negotiations for a comprehensive "Trans-Pacific Strategic Economic Partnership Agreement." Negotiations are ongoing. As with the Malaysia FTA, fast-track procedures would not apply to the Trans-Pacific Agreement unless Congress passes renewed fast-track legislation.

Agriculture Concerns. The agricultural community has expressed concerns about the Trans-Pacific Agreement. Our existing FTAs with Chile and Singapore have been very good for U.S. agricultural producers, and the agricultural community fears they will lose the favorable provisions in those FTAs if the agreements are reopened. Other agriculture groups also have defensive concerns with respect to New Zealand, which is a significant exporter of dairy, sheep, wool, and beef.

Regional Potential. As noted above, the United States already has FTAs with Singapore and Chile. And the potential increased trade with Brunei and New Zealand likely will have little economic impact. The true value of a Trans-Pacific Agreement lies in its potential to serve as a building block for a broader regional trade agreement. Vietnam, Peru, and Australia are said to be close to signing on to the Trans-Pacific talks, and Japan may join at a later date.

G. NAFTA

NAFTA entered into force in January 1994. In addition to phasing out most tariffs among the United States, Canada, and Mexico, NAFTA includes rules governing IP rights, investment, and other trade matters. NAFTA also includes separate labor and environmental side agreements that require the parties to enforce their own labor and environmental laws.

Concerns have recently been expressed, most prominently during the presidential campaign, that NAFTA's environmental and labor provisions are not strong enough and that the agreement should be renegotiated. If NAFTA is in fact renegotiated during the next Congress, and if those negotiations result in provisions that require changes to U.S. law, the 111th Congress will have to consider legislation to implement those changes.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

WTO "Doha" Round

Since November 2001, the 153 members of the WTO have been involved in protracted negotiations to liberalize global trade in agricultural goods, industrial goods, and services. These talks, known as the "Doha Round" (after the Qatari capital where the talks were launched in October 2001), have foundered. Negotiators struggled to break the deadlock in order to complete talks before the end of 2008, but the talks broke down in July after WTO members failed to agree on a compromise package issued by WTO Director-General Pascal Lamy. Since July, USTR Susan Schwab and other key trade ministers have attempted unsuccessfully to breathe life back into the talks. It is unlikely that any real progress will be made before India's elections in May, and the Round may remain stymied until after the European Union ("EU") appoints new Commissioners in late 2009.

A key consideration for the next Congress and administration will be whether the Doha Round should continue and, if so, in what form. And if the negotiations conclude, Congress will need to consider implementing legislation. Given that TPA has expired, however, fast-track procedures would not apply to congressional consideration of the agreement unless and until Congress passes renewed fast-track legislation granting the agreement such treatment.

The Doha Round has several key components:

Agricultural Goods. The United States faces intense pressure in the Doha Round to reduce its domestic support programs for farmers, including the marketing loan and countercyclical programs. The current negotiating text would require 66-73 percent reductions in U.S. domestic support. In exchange, the United States has demanded significant new access to foreign markets through tariff cuts from our trading partners. The current text includes a formula that would require both developed and developing countries to significantly cut agriculture tariffs, but the formula is weakened by loopholes that allow countries to exempt products from taking the full cut.

<u>First</u>, developed countries can designate 4-6 percent of their agricultural products as "sensitive," allowing them to take only 1/3 of the tariff cut otherwise required by the formula. Developing countries can include 5-8 percent of their products in this category. <u>Second</u>, developing countries can designate 10-18 percent of their products as "special," allowing them to make very small or no tariff cuts. <u>Third</u>, developing countries can invoke a special safeguard mechanism ("SSM") allowing them to raise tariffs on certain agricultural products when faced with an import surge. The July talks ultimately broke down over the terms of this SSM. The United States rejected demands by India and China to apply the SSM after only minor import surges and to raise their tariffs above current limits when the surges occur. U.S. agriculture exports would have faced higher tariffs in key markets under the Indian proposal, even as we decrease our own tariffs and domestic support.

Industrial Goods. The negotiations on non-agricultural market access ("NAMA") cover barriers to manufactured goods. The United States places heavy emphasis on the NAMA talks, given that these goods represent a significant percentage of U.S. exports. The United States has focused in particular on "sectoral" initiatives, which are designed to reduce or harmonize tariffs in key export markets and in specific sectors such as autos, chemicals, and electrical products. India, China, and other developing countries have opposed these efforts, however, unless they achieve their agriculture goals. Strong divisions also remain on the maximum tariffs that developing countries

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

can impose on industrial goods. And disagreement persists on how to apply the tariff-cutting formula to countries that are members of customs unions.

Services. Like the NAMA talks, the services negotiations have been linked to progress in the agriculture talks. Services trade liberalization has been a major priority for the United States given the internationally competitive nature of the U.S. services sector, and U.S. negotiators have been very aggressive in pushing countries to open their markets to U.S. services exports. At the same time, the United States has defensive concerns related to demands by other countries to further open our market to the temporary movement of people from one country to another to supply a service, known as "mode 4" (e.g., an Indian computer programmer who enters the United States for a limited time to perform a specific service). After the United States included temporary entry provisions in the Singapore and Chile FTAs, the Judiciary Committees have opposed including such provisions in any additional agreements.

The failed WTO ministerial in July focused almost exclusively on agriculture and industrial goods. Before the talks broke down, however, ministers did participate in a "signaling conference" on services, where WTO members signaled improvements they were willing to make to their services offers. Although the talks were not conclusive, key countries indicated a willingness to move forward in services sectors of interest to the United States if an agricultural deal is reached.

Rules. The rules negotiations focus on antidumping, countervailing duty, and other trade remedy laws. The United States is largely on the defensive in this group, with countries like Japan and Korea seeking to water down U.S. trade remedy laws. Little progress was made on this issue, however, during the failed ministerial in July. The WTO likely will wait and tackle these issues after it resolves the outstanding agriculture and industrial goods issues.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Bilateral Investment Treaties

The United States maintains an active bilateral investment treaty ("BIT") program. BITs are frequently negotiated with developing countries as a first step toward an eventual FTA with the United States. The basic goals of the BIT program are to (1) protect U.S. investments abroad; (2) encourage countries to adopt market-oriented domestic policies that treat private investment in an open, unbiased, and transparent manner; and (3) support the development of international law standards consistent with these objectives.

USTR and the State Department share responsibility for negotiating BITs on behalf of the U.S. government. They negotiate the BITs on the basis of a "model text," which was last updated in 2004 after extensive consultations with Congress and interested private stakeholders. The 2004 model contains provisions that the administration developed to address the investment negotiating objectives in TPA. And the model BIT text is substantively similar to the investment chapters of the FTAs that the United States has concluded since Congress enacted TPA.

The United States currently has BITs in force with 40 countries around the world. A list of these countries, as well as a copy of each BIT, is available on the Commerce Department's website at: http://tcc.export.gov/Trade_Agreements/Bilateral_Investment_Treaties/index.asp.

The United States is currently in the process of negotiating BITs with China, India, and Vietnam. (*For more information on the potential China BIT, which has garnered the most attention among the three current BIT negotiations, please see the "China" section of this memorandum*.) Once these negotiations conclude, the administration will submit them to the Senate for ratification. Given that BITs are treaties, fast-track procedures will not apply even if TPA is renewed. BITs, like all treaties, instead require 2/3 approval by the Senate.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Preference Programs

For over thirty years, the United States has provided unilateral trade preferences to developing countries to promote export-led economic growth by allowing duty-free access to the United States for a range of products. Imports from preference program beneficiaries totaled $92 billion in 2006 – about 5 percent of total U.S. goods imports. Many of our preference programs will expire at the end of 2009, however, and Congress will need to consider whether and how to extend them.

Generalized System of Preferences ("GSP"). GSP is the longest-standing and largest U.S. preference program, both in terms of the volume of trade and the number of beneficiary countries. GSP provides duty-free access to the U.S. market for 3,400 products from over 130 developing countries. And the program also provides access for 1,400 additional products from least developed countries. Sensitive items such as textiles and footwear, however, are excluded from coverage. In order to be eligible for GSP, a country must meet strict eligibility criteria, including affording workers internationally recognized labor rights, eliminating the worst forms of child labor, and protecting U.S. investment by recognizing and enforcing arbitral awards favoring U.S. businesses. The GSP program expires on December 31, 2009.

Next year, Congress likely will consider reform of GSP and other trade preference programs to ensure that they continue to promote the goal of helping lower income countries develop through trade. During this process, we expect Members to raise a number of issues. Some Members have expressed concern, for example, as to whether advanced developing countries – like Brazil – should continue to receive benefits that should flow to poorer countries. Others argue that the United States should terminate coverage for countries, such as India, that have opposed U.S. positions in the WTO Doha Round negotiations. And still others argue that the United States should expand product coverage for least developed countries, such as Cambodia.

Andean Trade Preferences Act ("ATPA"). ATPA provides duty-free access to the U.S. market for certain goods from Peru, Colombia, Bolivia, and Ecuador. Congress established ATPA in 1991 as part of an effort to encourage these countries to diversify their economies away from illegal drug production. ATPA's preferences are broader than under GSP and include coverage for certain textiles, apparel, footwear, and watches. To qualify, countries must comply with strict eligibility criteria, including protecting U.S. investments and intellectual property rights and taking steps to afford their workers internationally recognized labor rights. Additionally, when considering a country's eligibility, the President must consider whether a country has cooperated with the United States in counternarcotics efforts. The program has been repeatedly renewed since 1991, but concerns have recently been raised as to whether Ecuador and Bolivia should continue to receive benefits in light of questions regarding Ecuador's treatment of U.S. investors and Bolivia's cooperation on counternarcotics efforts.

Congress most recently extended ATPA in October 2008. In light of the concerns discussed above, however, the extension periods differ by country. Benefits for Peru and Colombia were extended until December 31, 2009, but benefits for Ecuador and Bolivia were only extended until June 30, 2009. The President can extend Ecuador's benefits for six additional months – to December 31, 2009 – unless he finds that Ecuador does not satisfy the program's eligibility requirements. The President can also extend Bolivia's benefits for six additional months, but only if he affirmatively finds that Bolivia satisfies all of the program's eligibility requirements.

Although Congress extended ATPA for all four countries, the President retains discretion under the statute to suspend benefits for any of the countries if he determines that the country is not meeting ATPA's eligibility criteria. Consistent with this authority, President Bush recently proposed suspending Bolivia's benefits due to its failure to meet ATPA's counternarcotics cooperation criteria. This proposed suspension was based on the President's September 2008 determination that, during the past year, Bolivia failed to (1) adhere to its obligations under international counternarcotics agreements and (2) take measures to meet the counternarcotics goals set forth in section 498(a)(1) of the Foreign Assistance Act of 1961. USTR conducted a hearing to examine the issue in October, and the President is expected to make a final determination by late 2008 or early 2009.

African Growth and Opportunity Act ("AGOA"). AGOA expands upon GSP to provide duty-free access to qualifying textile, apparel, petroleum, and other products from 38 eligible sub-Saharan African countries. Imports totaling $36 billion entered the United States in 2006 under the AGOA program – 64 percent of total U.S. imports from those countries. Imports from Nigeria accounted for over $20 billion of the total and consisted mostly of petroleum and petroleum products.

Most of the AGOA benefits expire in 2015, but certain textile provisions expire in 2012. Congress amended AGOA in 2006 to require beneficiary countries to use African fabric in their apparel production – a requirement that caused a substantial drop in production and reduced many of AGOA's benefits for least developed African countries. Congress repealed this provision in October 2008. Least developed African countries can now receive duty-free treatment for apparel products made with "third country fabric," i.e., fabric from a country other than the United States or an AGOA beneficiary country. In October 2008, Congress also designated Mauritius as a least developed country, which means that apparel exports from Mauritius that include third country fabric will now be eligible for duty-free treatment.

Caribbean Basin Initiative ("CBI"). CBI provides duty-free access to the U.S. market for textile, apparel, and other products from the Caribbean Basin countries, including Barbados, Belize, Guyana, Jamaica, Panama, St. Lucia, Haiti, and Trinidad and Tobago. It was initially launched in 1983 through the Caribbean Basin Economic Recovery Act and was substantially expanded in 2000 through the U.S.-Caribbean Basin Trade Partnership Act. In the 2008 Farm Bill, Congress extended CBI benefits until September 30, 2010.

Haitian Hemispheric Opportunity through Partnership Encouragement Act ("HOPE"). In 2006, Congress passed the Haitian HOPE Act, which provides Haitian textiles and apparel with duty-free access to the U.S. market if a certain percentage of the value of such products is derived from fabric or processing that originates in Haiti, the United States, one of our FTA partner countries, or certain of our other preference program beneficiary countries. In the 2008 Farm Bill, the 110th Congress passed the Hemispheric Opportunity through Partnership Encouragement Act of 2008 ("HOPE II"), which significantly expands HOPE by loosening the eligibility rules and qualifying more Haitian textiles and apparel exports for duty-free access to the United States. HOPE II also includes provisions to promote Haiti's compliance with core labor standards and to improve working conditions. The HOPE program expires on September 30, 2018.

China

China-related issues likely will remain a significant concern during the next Congress. Frustration over China trade issues has increased in recent years, focusing on record bilateral trade deficits, China's undervalued currency, and its rampant theft of U.S. copyrights and other IP rights. The administration's perceived inaction on China in its first term turned into active engagement in its second, including a greater willingness to bring China into the WTO dispute settlement process and initiation of the high-level U.S.-China Strategic Economic Dialogue ("SED"). The recent U.S. financial crisis has somewhat tempered Congressional criticism of China. But reactions to the deteriorating global economic outlook may create new trade frictions in the months to come.

We have provided a summary of key issues in the U.S.-China economic relationship below:

U.S.-China Trade. Bilateral trade with China hit $387 billion in 2007, making China our second largest trading partner after Canada. But the trade remains unbalanced, and the United States posted a record bilateral trade deficit of $256 billion with China last year, accounting for nearly a third of our total deficit. Strong U.S. exports and weakening demand for Chinese goods should lead to smaller deficit increases this year. Some fear, however, that China may act to counter this trend. Sagging global demand for Chinese exports recently prompted the Chinese government to announce that it plans to provide incentives to its export industries, including an increase in export tax rebates.

WTO Cases. The United States has four pending WTO cases against China. <u>First</u>, in March 2008, USTR filed a case challenging Chinese regulation of foreign financial information services. The regulation forbids these companies from contracting directly with Chinese clients and instead forces them to use a subsidiary designated by the Xinhua state news agency. The case remains in the consultation phase. <u>Second</u>, USTR filed a case in August 2007 alleging inadequate protection and enforcement of IP rights in China. The dispute settlement panel issued its confidential preliminary ruling in October 2008, and a final ruling is expected in late 2008 or early 2009. <u>Third</u>, USTR filed another case in August 2007 challenging import, distribution, and market access barriers in China for films, other audiovisual products, and publications. The panel's final report is expected in early 2009. <u>Fourth</u>, USTR filed a case in March 2006 challenging Chinese rules affecting the purchase of foreign auto parts. USTR argued that domestic taxes and other rules induce foreign firms to use locally produced parts when they manufacture vehicles in China. The WTO found in favor of the United States in February 2008. China is currently appealing that decision. Two additional cases against China – concerning export subsidies and the tax treatment of semiconductors – were settled during the consultation phase.

Currency. China's tightly managed exchange rate has caused considerable concern in Congress over the past several years. Critics contend that, by managing the renminbi ("RMB"), or yuan, to keep its value artificially low, China gains an unfair export advantage and creates economic imbalances globally and in its own economy. Under pressure from the United States, China allowed its currency to appreciate slightly in 2005 and 2006, and at a much faster pace in 2007. The RMB's value continues to closely track the U.S. dollar, and it has appreciated in the fall of 2008 against a range of currencies as the U.S. dollar has rallied. Most analysts continue to view the Chinese currency as undervalued, including the U.S. Treasury and the International Monetary Fund.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

A number of bills were introduced in 2006 and 2007 to address China's undervalued currency. In early 2007, Senators Baucus, Grassley, Schumer, and Graham crafted compromise legislation to address the trade and economic implications of undervalued currencies. That bill, S. 1607, passed the Senate Finance Committee 20 to 1 in July 2007. The Senate Banking Committee introduced a separate bill, S. 1677, which passed the Banking Committee 17 to 4 in August 2007. The full Senate has not yet acted on either bill.

Bilateral Investment Treaty. In June 2008, the United States and China announced the launch of BIT negotiations. Negotiators have met since then, but progress has been very slow. Successful negotiations likely will take many months or even years, with the goal of securing fair treatment for American and Chinese investment in both countries. As with all BITs, the United States will seek to secure non-discriminatory treatment for U.S. investment, prohibit expropriation without compensation, limit performance requirements such as local content rules, and create binding international arbitration. (*For more information on the U.S. BIT program generally, please see the "BIT" section of this memorandum*.)

Government Procurement. In January 2008, China applied to join the WTO's plurilateral Government Procurement Agreement ("GPA"). Chinese accession to the GPA would help ensure that U.S. companies receive fair treatment when they submit bids to provide goods and services to Chinese government entities. In its initial offer, however, China adopted a tough bargaining posture and offered a long, 15-year phase-in period before opening its government procurement to foreign companies. And China's offer contained very high dollar thresholds for GPA coverage, under which China would not have to allow foreign competition for government contracts.

Intellectual Property Rights. China has made some progress in its protection and enforcement of IP rights, but violations are still rampant and persistent. Improvements include China's accession to the World Intellectual Property Organization Internet Treaties, its ongoing implementation of rules that require computers to be pre-installed with licensed operating system software, and its recent pledge to cooperate and exchange information with U.S. customs authorities. Anti-piracy campaigns – sometimes conducted jointly with the U.S. Federal Bureau of Investigation – have also had some effect, but U.S. copyright industries estimate that 85-95 percent of U.S. copyrighted works sold in China are pirated. Internet piracy is also increasing as internet access grows.

Import safety. Over the past two years, numerous recalls, warnings, and import restrictions were issued involving Chinese products. U.S. Food and Drug Administration warnings included bad pet food, tainted toothpaste, seafood with illegal microbial agents, and tainted blood thinner. China has pledged to improve its health and regulatory regime and signed two Memoranda of Understanding in 2007 requiring Chinese exporters of certain products to register with the Chinese government, obtain certification, and subject themselves to annual inspection. But the government has been struggling to restore domestic and international confidence in the safety of China's food supply since the discovery in September 2008 of widespread adulteration of dairy products with the toxic industrial chemical melamine.

JCCT. Originally established in 1983, the Joint Commission on Commerce and Trade ("JCCT") has become the principal forum for the United States and China to address and resolve trade disputes. It is chaired by the USTR and Secretary of Commerce for the United States and by a Vice

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Premier (currently Vice Premier Wang Qishan) for the Chinese. The last JCCT took place in September 2008 in Yorba Linda, California.

SED. President Bush and Chinese President Hu established the SED in 2006 to discuss economic issues at the "highest official level." Managed by Treasury Secretary Paulson and Chinese Vice Premier Wang, the SED has met four times and is scheduled to meet again in December 2008 in Beijing. Each SED involves dozens of cabinet-level officials from both governments, with the goal of addressing long-term economic challenges. The first four SED rounds yielded little concrete progress. The first round essentially served as an introductory session. The second round resulted in Chinese commitments to open its financial sector, increase the number of passenger flights to China from the United States, and lower barriers for trade in environmental goods and services. The third round was steeped in the politics of a deadly food safety scandal in China and resulted in the issuance of Memoranda of Understanding on food, drug, and medical device safety. The fourth SED round announced the BIT negotiations, a long-term framework for environmental cooperation, and incremental steps in financial services liberalization.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Miscellaneous Tariff Bill

The 111th Congress may consider a miscellaneous tariff bill ("MTB"), which is a collection of individual trade-related bills. Items in the MTB are generally limited to non-controversial trade measures with a cost below an agreed *de minimis* threshold. Most MTB provisions are temporary duty suspensions for industrial inputs and similar products not made in the United States. Other provisions, including technical corrections, are permitted if they meet the criteria for inclusion.

The process of assembling an MTB involves public notice so that Members can file relevant bills, followed by a process of review and vetting to eliminate controversial items. The Senate also adopted new rules in 2007 under The Honest Leadership and Open Government Act that affect the MTB process. Under the new rules, each Senator must provide a written disclosure for each bill that would benefit ten or fewer entities. Senators also must certify that no one in their immediate family has a financial interest in the bill, and they must identify which companies they expect to benefit from the bill. Senators must make these disclosure statements available to the public at least two days before the Senate takes any action on the MTB.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Sanctions

The United States imposes trade and other economic sanctions on several countries, including Iran, Burma, and Cuba. Trade sanctions generally prohibit either the export of U.S. products to sanctioned countries, the import of goods from a sanctioned country into the United States, or both.

Iran. The Senate Finance and Banking Committees both reported Iran sanctions bills in the 110th Congress. Neither of these bills was enacted into law. Given that the issues raised by these bills will likely be revisited in the 111th Congress, however, we describe each of them below.

The Senate Finance Committee passed the Iran Sanctions Act of 2008 ("ISA") in June 2008. The bill (S. 3227) strengthens a range of trade and other economic sanctions against Iran. With respect to trade sanctions, ISA codifies an existing Executive Order that prohibits the exportation of all U.S. products to Iran, with limited exceptions for food, medicine, medical products, and certain information materials. ISA also prohibits the importation of all Iranian goods into the United States. And it prohibits the United States from aiding in Iran's accession to the WTO. ISA also significantly expands non-trade related sanctions against Iran. It requires the President to freeze the assets of Iranian persons who are subject to U.S. sanctions, for example. It imposes sanctions on U.S. parent companies if their foreign subsidiaries engage in actions that violate U.S. sanctions laws and the parent knowingly participates in such actions. And it prohibits the United States from entering into a nuclear cooperation agreement with Russia until Russia suspends its nuclear assistance to Iran and Iran abandons its nuclear enrichment and reprocessing programs. ISA also includes waiver provisions that would allow the President to waive many of these prohibitions if he finds that it is in the national interest to do so.

The Banking Committee also passed an Iran sanctions bill in the 110th Congress, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2008 (S. 3445). The Banking bill is substantially similar to ISA, but contains some key differences. It does not, for example, prohibit the United States from aiding in Iran's WTO accession or entering into a nuclear cooperation agreement with Russia. And it contains a few significant provisions that are not in ISA, including provisions that (1) authorize State and local governments to divest any assets that invest more than $20,000,000 in Iran's energy sector; and (2) tighten U.S. export controls over sensitive technologies that could be diverted to Iran.

Burma. The Burmese Freedom and Democracy Act of 2003 ("BFDA"), as amended by the Tom Lantos Block Burmese JADE Act of 2008 ("JADE Act"), prohibits the importation of any Burmese product into the United States and also prohibits the importation of Burmese jade and rubies that have been transformed into other products – such as jewelry – in third countries. The BFDA requires Congress to renew these import restrictions each July.

In addition to the import restrictions, the BFDA, as amended by the JADE Act, allows the President to freeze the assets of (1) senior officials of the military junta, known as the State Peace and Development Council ("SPDC"); and (2) senior officials of the Union Solidarity Development Association ("USDA"), which is the SPDC's political arm. It also prohibits U.S. persons from dealing in property belonging to sanctioned persons or engaging in financial transactions with sanctioned persons.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Finally, the BFDA, as amended by the JADE Act, also permits the President to deny U.S. visas and entry to (1) former and present leaders of the SPDC and USDA; (2) former and present leaders of the Burmese military; (3) people who provide substantial economic and political support for the SPDC, USDA, or Burmese military; and (4) immediate family members of the SPDC, USDA, Burmese military, or those who provide substantial economic and political support to the SDPC, USDA, or Burmese military.

Cuba. The Finance Committee held a hearing in December 2007 to explore different options for addressing the U.S.-Cuba relationship through trade. And several bills were introduced in the 110th Congress to either loosen or tighten existing restrictions on Cuba. Senator Baucus and Ways and Means Committee Chairman Rangel, for example, together introduced a bill that would ease Cuba travel restrictions, as well as restrictions on U.S. agricultural and medical exports to Cuba. Senators Enzi and Dorgan introduced similar bills easing Cuba travel restrictions. And Senators Martinez and Nelson introduced bills that would tighten existing sanctions related to Cuba's offshore oil development.

Given the ongoing political transition in Cuba, and the more than $5 billion in damage that Cuba suffered following Hurricanes Ike and Gustav, Congress may face efforts to liberalize U.S. sanctions against Cuba in the 111th Congress. U.S. exports of food and medicine to Cuba, which are exempt from the current embargo, are expected to reach record highs in 2008.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Beef Trade

U.S. beef exports continue to face restrictions in several key markets, including Japan, China, the EU, and Korea. Most of these restrictions were put in place in 2003, when a case of BSE was reported in a U.S. dairy cow born in Canada. Many countries resumed trade in 2004 after the United States implemented stronger regulatory and oversight measures. And the World Organization for Animal Health ("OIE") recognized the United States as a "controlled risk" country with regard to BSE in 2007. Under the OIE guidelines, all cuts of beef, from cattle of all ages, can be safely imported from controlled risk countries. Despite these developments, Japan, Korea, China, and Hong Kong have maintained their restrictions, which have severely limited U.S. beef exports. A recent ITC report found that U.S. beef exports in 2007 were only two-thirds of their 2003 level and that BSE-related trade restrictions caused nearly $11 billion in lost exports from 2003-2007. The status of U.S. beef trade with key countries is outlined below.

Japan. Japan was once the largest export market for U.S. beef, accounting for $1.3 billion of exports (more than 1/3 of the U.S. total) in 2003. Japan closed its border to all U.S. beef in late 2003, and it remained closed through most of 2005. Japan reopened its market in December 2005 to U.S. beef from cattle under 20 months of age, except for short periods when it imposed further restrictions to deal with problem shipments. U.S. officials at all levels of government have pressed Japan to reopen its market to U.S. beef from cattle over 20 months in accordance with OIE guidelines, but these requests have thus far gone unanswered. Fully reopening the Japanese market remains the top priority of U.S. beef producers.

Korea. Korean market restrictions are responsible for the loss of more than $3.7 billion in beef exports from 2004-2007. Like Japan, Korea closed its market to U.S. beef in late 2003. In June 2006, after difficult negotiations, the market reopened to boneless cuts of beef from cattle under 30 months of age. This protocol proved unworkable, however, as U.S. packers found it difficult to segregate boneless and bone-in cuts, and Korean inspectors rejected shipments that contained tiny bone fragments. After receiving its controlled risk designation from the OIE in 2007, the United States requested a revised import protocol from Korea, and an agreement was announced in April 2008 that would have allowed all U.S. beef – regardless of cut and the age of cattle – into Korea. Massive protests in Seoul prevented the implementation of this new protocol, however, and Korean officials returned to Washington in June 2008 to renegotiate the agreement. The June 2008 talks resulted in a "commercial understanding" whereby Korean importers and U.S. exporters agreed that only beef from cattle less than 30 months of age would be shipped to Korea. Beef is steadily flowing to Korea under this protocol. More than 12,000 metric tons of U.S. beef was shipped to Korea in August 2008 alone.

China and Hong Kong. Although China historically has not imported large volumes of U.S. beef, it has significant market growth potential. Rising incomes among China's 1.3 billion consumers are rapidly increasing demand for meat. Although China has officially closed its market to U.S. beef exports since 2003, many suspect that grey market U.S. beef imports are entering China. Hong Kong currently accepts boneless cuts of U.S. beef from cattle under 30 months of age, but as with Korea, its zero tolerance for even tiny bone fragments has led to the delisting of several U.S. beef plants.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

EU. The EU imposed a ban on the use of growth-promoting hormones in beef production in 1989, which effectively ended trade with all but a few small U.S. exporters who certify that their beef is hormone-free. In 1998, the United States prevailed in a WTO challenge to the EU ban. The EU chose to maintain its ban despite the WTO ruling, and as a result, the WTO authorized the United States to impose retaliatory tariffs on certain imports from the EU. These tariffs have remained in place since 1999.

The EU modified but did not lift its ban in 2003 and then claimed that the modification required the United States to lift its sanctions. In October 2008, the WTO Appellate Body found that the United States was not required to remove its sanctions. It instead found that the EU must request a formal compliance proceeding to determine whether the EU's modified ban does in fact comply with the original WTO ruling.

ITC Report. The ITC released a report in October 2008 that details current restrictions on U.S. beef exports in Japan, Korea, China, the EU, Russia, Canada, and Mexico. As noted above, the report found that BSE-related restrictions on U.S. beef resulted in nearly $11 billion in lost exports from 2003-2007. A full copy of the report can be found at the following link: http://hotdocs.usitc.gov/docs/pubs/332/pub4033.pdf.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Export Promotion

U.S. goods and services exports totaled $1.3 billion last year – a record high equal to more than 10 percent of gross domestic product. And federal and state programs to promote U.S. exports pay significant dividends – every dollar spent on export promotion increases actual exports by $160. Despite these tangible benefits, however, the United States spends far fewer resources on export promotion than other large developed economies.

The Department of Commerce and the Department of Agriculture maintain several export promotion programs that help businesses learn how to export, develop relationships with foreign companies, and market their products in foreign countries. The 111th Congress may consider expanding these export promotion programs to ensure that they (1) are available to all U.S. businesses, regardless of size; (2) reduce or eliminate program fees, especially for small U.S. businesses; (3) maintain a significant presence in existing and potential foreign markets; (4) cover products in all U.S. export sectors; and (5) are continuously and adequately funded.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Russia -- Permanent Normal Trade Relations ("PNTR")

Once Russia completes its accession to the WTO, Congress will need to consider whether to grant Russia PNTR status. Russia is currently subject to the "Jackson-Vanik" provisions of U.S. trade law (Section 402 of Title IV of the Trade Act of 1974). Enacted in January 1975 in response to concern about Jewish emigration from the former Soviet Union, the Jackson-Vanik law withholds PNTR status (formerly known as "Most Favored Nation," or "MFN" status) from certain Communist and ex-Communist countries. Once a Jackson-Vanik nation joins the WTO, however, the United States must extend PNTR to that nation in order to comply with our WTO obligations. If the United States fails to grant PNTR to a WTO member, U.S. companies would be unable to obtain the tariff cutting and other market opening benefits attendant to that country's WTO accession. Congress has granted PNTR to other Jackson-Vanik countries – including China, Armenia, Albania, Ukraine, and Vietnam – that have joined the WTO.

A congressional PNTR vote on Russia is not imminent, however, and will not take place until Russia has finalized its bid to join the WTO. To do so, Russia must conclude (1) bilateral negotiations on tariffs and services market access with any interested WTO member; and (2) multilateral negotiations with a WTO Working Party to ensure that Russia's laws comply with WTO rules. The United States and Russia concluded their bilateral WTO talks in November 2006. The two sides have not yet resolved serious deficiencies in Russia's IP regime, however. As part of their bilateral deal, the United States and Russia agreed to resolve a host of key IP issues in the multilateral negotiations. The IP discussions are ongoing in that forum, but thus far Russia has shown limited willingness to address its deficiencies. The multilateral negotiations have also stalled over issues related to Russia's agricultural subsidies, export duties, and state-run enterprises. And Russia also must finalize bilateral negotiations with Saudi Arabia and Ukraine.

Russia's bid to join the WTO, pending since 1995, is not likely to conclude any time soon. In addition to the difficulties described above, the negotiations have been seriously compromised by Russia's military invasion of Georgia in August 2008. Secretary of State Condoleezza Rice, for example, has said that Russia's WTO accession is "going nowhere" as a result of the diplomatic fallout from the invasion. And under WTO rules, Russia's accession must secure consensus support from the organization's 153 members, which effectively gives the United States and Georgia a veto on Russian entry.

Russian officials have also issued conflicting statements since the invasion as to whether they remain committed to WTO membership. Shortly after the invasion, Prime Minister Putin declared that Russia saw "no benefits" in WTO membership, a move that was seen as a preemptive act to counter warnings from Secretary Rice and others that Russia's actions in Georgia would threaten its WTO accession efforts. Putin has subsequently said that Russia would continue the WTO accession talks, but emphasized that the talks "require concessions by both sides" and that Russia would "suspend excessive obligations and other super-quotas." Perhaps in furtherance of Putin's comment, Russia's Agriculture Minister has suggested reopening Russia's bilateral agreement with the United States to cut the U.S. poultry and pork import quota.

OBAMA-BIDEN TRANSITION PROJECT

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Softwood Lumber

The United States and Canada have engaged in trade disputes over softwood lumber for the last thirty years. These disputes arise out of a concern by the U.S. softwood lumber industry that the Canadian provincial governments provide unfair assistance, including domestic subsidies, to their softwood lumber producers. The United States and Canada attempted to resolve these disputes in 2006, when they signed the Softwood Lumber Agreement ("SLA"). The SLA regulates softwood lumber trade between the two countries by requiring Canada to apply export taxes and quotas when lumber prices drop below a specified threshold.

Although the SLA generally has been effective, the U.S. industry has raised concerns that some Canadian provinces are not complying with their SLA obligations. As a result, the U.S. Government invoked the SLA's dispute settlement mechanism in 2007 and pursued international arbitration against the Canadian government to compel compliance. The arbitral panel issued a mixed ruling in March 2008. It found in favor of the U.S. argument that Quebec and Ontario had improperly exceeded the SLA's export quotas. But it found against the U.S. argument that British Colombia and Alberta failed to properly calculate the SLA's export taxes. Remedy proceedings are ongoing.

The 110th Congress also passed a softwood lumber enforcement mechanism as part of the 2008 Farm Bill that requires (1) U.S. importers to declare that their softwood lumber imports are consistent with international trade agreements; (2) Customs and Border Protection ("CBP") to verify the accuracy of such declarations; and (3) CBP to assess penalties if the importers knowingly provide false information on their declarations.

OBAMA-BIDEN TRANSITION PROJECT
THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Trade Capacity Building ("TCB")

Our FTA partners from developing countries often need technical assistance to develop, implement, and enforce the obligations they undertake in an FTA. Parallel to the FTA negotiations, the United States negotiates TCB agreements that outline cooperative projects intended to improve environmental and labor standards, protect IP, and upgrade sanitary and phytosanitary regimes in our partner countries. U.S. agencies will assist Peru, for example, in its efforts to combat illegal logging and establish an environment ministry, both of which are critical for Peru to meet its FTA obligation to effectively enforce its environmental laws. And the United States sought to bolster the DR-CAFTA agreement by funding programs to educate workers about their rights and to prevent the use of child labor in agriculture, both of which are essential components of the DR-CAFTA countries' commitment to improve and enforce labor standards. We expect efforts in the 111th Congress to provide adequate funding to meet our TCB commitments and to ensure that our trading partners can fulfill their FTA obligations.