Trade Facts

Office of the United States Trade Representative www.ustr.gov
Bipartisan Agreement on Trade Policy
May 2007

Bipartisan Trade Deal

We have seized an historic opportunity to restore the bipartisan consensus on trade with a clear and reasonable path forward for congressional consideration of Free Trade Agreements with Peru, Colombia, Panama and Korea. The new trade policy template also opens the way for bipartisan work on Trade Promotion Authority. This will ensure the creation of new economic opportunities for American farmers, ranchers, manufacturers, service providers, more choices for consumers, and help guarantee that the benefits of trade extend to all people. – Ambassador Susan C. Schwab

Labor

Internationally-recognized labor principles incorporated into trade agreements

- Enforceable reciprocal obligation for the countries to adopt and maintain in their laws and practice the five basic internationally-recognized labor principles, as stated in the ILO Declaration on Fundamental Principles and Rights at Work.
    - Freedom of association;
    - The effective recognition of the right to collective bargaining;
    - The elimination of all forms of forced or compulsory labor;
    - The effective abolition of child labor and a prohibition on the worst forms of child labor; and
    - The elimination of discrimination in respect of employment and occupation.
- The obligation refers only to the ILO Declaration on Fundamental Principles and Rights at Work. A violation must occur in a manner affecting trade or investment between the parties.
- Enforceable obligation to effectively enforce labor laws; five basic internationally-recognized labor principles from the 1998 Declaration, plus acceptable conditions of work.
- Violation requires showing that non-enforcement of labor obligations occurred through a sustained or recurring course of action or inaction
- A violation must occur in a manner affecting trade or investment between the parties.
- The agreement does not change the current definition of labor laws in our FTAS and thus applies only to federal labor laws.

- Only a government can invoke dispute settlement against the other government for a labor violation under an FTA.

- Labor obligations subject to the same dispute settlement procedures and remedies as commercial obligations. Available remedies are fines and trade sanctions, based on amount of trade injury.

- As with commercial provisions, panel decisions are not self-executing. That is, they would not alter U.S. law.

United States Compliance with the ILO Declaration

- "The United States recognizes, and is committed to, the fundamental principle of freedom of association and the effective recognition of the right to collective bargaining. This principle is assured by the First, Fifth, and Fourteenth Amendments of the United States Constitution, supplemented by legislation . . . ." – Annual Report for 1999 of the United States of America

- "The principle of the elimination of all forms of forced or compulsory labor is clearly recognized in the United States." – Annual Report for 1999 of the United States of America

- "The United States recognizes the principle of the effective abolition of child labor." – Annual Report for 1999 of the United States of America

- "The Government of The United States recognizes and is committed to the fundamental principle of the elimination of discrimination in respect of employment and occupation and as it relates to equal remuneration for men and women workers for equal work through existing United States constitutional law." – Annual Report for 1999 of the United States of America

Environment

- The Administration and Congress have agreed to incorporate a specific list of multilateral environmental agreements (MEAs) in our FTAs.

- The list includes (with abbreviated titles) the Convention on International Trade in Endangered Species (CITES), Montreal Protocol on Ozone Depleting Substances, Convention on Marine Pollution, Inter-American Tropical Tuna Convention (IATTC), Ramsar Convention on Wetlands, International Whaling Convention (IWC), and Convention on Conservation of Antarctic Marine Living Resources (CCAMLR).

- The United States is a signatory to all of these agreements. The United States takes seriously its obligations under these MEAs. We have nothing to fear from taking on FTA commitments for these agreements as well and subjecting those commitments to the FTA dispute settlement process where trade or investment are affected.

- We have also agreed to alter the non-derogation obligation for environmental laws from a "strive to" to a "shall" obligation, with allowance for waivers permitted under law as long as it does not violate the MEA. For the United States, this obligation is limited to federal laws and should not affect our implementation of these laws.

- Finally, we have agreed that all of our FTA environmental obligations will be enforced on the same basis as the commercial provisions of our agreements – same remedies, procedures, and sanctions. Previously, our

environmental dispute settlement procedures focused on the use of fines, as opposed to trade sanctions, and were limited to the obligation to effectively enforce environmental laws.

- In connection with the Peru FTA, we have agreed to work with the Government of Peru on comprehensive steps to address illegal logging, including of endangered mahogany, and to restrict imports of products that are harvested and traded in violation of CITES.

Intellectual Property

- The Administration's agreement with the Congressional leadership preserves a strong overall level of protection for intellectual property in developing country free trade agreements, including those most recently notified to the Congress.

- Within this overall framework of strong intellectual property protection, the agreement reached with the Congressional leadership aims to incorporate certain flexibilities. These modifications are aimed at further ensuring that developing country free trade agreement partners are able to achieve an appropriate balance between fostering innovation in, and promoting access to, life-saving medicines. The results are fully in line with this Administration's long-standing trade policy objectives in the area of intellectual property.

- In particular, the agreement with the Congressional leadership entails the following elements related to intellectual property, medicines, and health:

    - Clarification that the period of protection for test data for pharmaceuticals by developing country FTA partners will generally not extend beyond the period that such protection is available for the same product in the United States, coupled with a provision that will encourage our partners to process marketing approval applications for innovative drugs in a timely manner.
    - Clarification that developing country FTA partners may implement exceptions to normal rules for protecting test data if necessary to protect public health.
    - A more flexible approach, for developing country partners, to restoring patent terms to compensate for processing delays. This flexibility is accompanied by new provisions stipulating that trading partners will make best efforts to process patent and marketing approval applications expeditiously.
    - More flexibility in terms of the types of procedures that developing country partners may implement to prevent the marketing of patent-infringing products.
    - Integration within the intellectual property chapter of a recognition that nothing in the chapter affects the ability of our FTA partners to take necessary measures to protect public health by promoting access to medicines for all, and a statement affirming mutual commitment to the 2001 Doha Declaration on the TRIPS Agreement and Public Health.

- While the agreement on pending FTAs with developing countries incorporates various flexibilities with respect to pharmaceutical-related IPR provisions, the intellectual property chapters of these agreements continue to represent an enhancement of IPR protection for pharmaceutical products in those markets, compared to the status quo situation. In particular, these FTAs:

    - Contain provisions protecting against unfair commercial use of test and other data submitted in connection with product approval. These provisions, even as modified by the Administration-Congress agreement, provide assurances that our developing country FTA partners will satisfy their obligations under the TRIPS Agreement.

Investment

- This preamble provision would recognize that foreign investors in the United States will not be accorded greater substantive rights with respect to investment protections than United States investors in the United States.

- We have long recognized this principle as a principal negotiating objective of our FTA negotiations. In particular, the Trade Act of 2002 describes this objective as "ensuring that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States."

- We believe that the four pending FTAs (as well as the other FTAs we have concluded in the past five years) fully achieve this objective of the Trade Act, in part by including innovations such as a clarification of customary international law and guidance regarding indirect expropriation.

Government Procurement

- This provision would clarify that FTA parties may insert requirements in their government contracts that suppliers must comply with core labor laws in the country where the good is produced or the service is performed.

- These may include laws setting out labor conditions such as occupational safety and health requirements.

- Some state governments have sought to ensure that their contractors observe basic labor rights and labor laws, and the proposed clarification makes clear that they can do so.

- Our FTAs include a similar provision clarifying that government agencies can include provisions in their procurements to promote environmental protection.

Port Security

- Some in Congress have worried that FTAs may allow foreign government-owned companies to operate U.S. ports even where there are legitimate security concerns.

- A new FTA provision would clarify that the agreement's "essential security" exception, which can be invoked to override any FTA obligation, including on port services, is not subject to challenge.

- That means if a foreign company's plan to provide services at a U.S. port raises national security concerns, we can be sure the FTA will not stand in the way of any action U.S. authorities take to address those concerns.