



# Washington REPORT

News and analysis from Washington, D.C. about key issues in U.S.-Asia Pacific Relations

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## Managing The Myriad Challenges In U.S.-Asian Trade Relations

Amb. Susan C. Schwab

*The U.S.-China economic relationship has grown increasingly important, complex, and potentially contentious as evidenced by the furor that erupted following President Obama's decision on September 11 to impose tariffs on Chinese tire imports. But as former U.S. Trade Representative Susan C. Schwab observed a few weeks before the tire case was decided, the undeniable fact is that both countries need each other's markets and money too much and have a shared interest in keeping both markets as open as possible.*

*In this conversation with USAPC, she explores the challenges of pursuing trade cases against China as well as the opportunities of further developing economic relations in Asia.*

**USAPC:** In August, a World Trade Organization (WTO) dispute settlement panel found that major Chinese restrictions on the importation and distribution of foreign copyrighted materials run afoul of China's WTO obligations. The United States originally filed this case during your tenure as the U.S. Trade Representative.

In practical terms, how much of a victory was this for the United States and what does this finding portend for the future of trade enforcement cases against China?

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## Congress Assesses U.S.-China Strategic and Economic Dialogue

Indicative of still high distrust of China on Capitol Hill, lawmakers at a recent hearing were critical of the Obama administration's efforts to address challenges in U.S.-China relations, in general, but particularly through the newly inaugurated U.S.-China Strategic and Economic Dialogue (S&ED).

Senior U.S. officials testifying before the House Foreign Affairs Subcommittee on Asia, the Pacific, and the Global Environment on September 20 acknowledged that the United States and China will not always agree on all issues. But they asserted that the S&ED will continue to provide an effective mechanism

for the two countries "to resolve their differences, build trust, and strengthen cooperation" going forward.

**Substantive Output**—In particular, David Shear, Deputy Assistant Secretary of State for China, and David Loevinger, Executive Secretary and Coordinator for China Affairs and the S&ED at the Treasury Department, noted that the S&ED, which was held in Washington on July 27–28, produced a groundbreaking Memorandum of Understanding (MOU) on climate change.

In addition, both sides made important commitments on a range of salient economic, foreign policy,

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## Official Washington

In each issue, *Washington Report* will provide the names and contact information for selected executive branch officials with jurisdiction over economic, political, and security issues important to U.S.-Asia Pacific relations. This issue focuses on pertinent personnel from the Office of the U.S. Trade Representative.

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**Schwab:** This was one of several cases we took to the WTO and where the WTO has issued findings against China. There was the auto parts case, the first IPR [intellectual property rights] case, and now this case. China lost all three of those cases, and the question now is what happens next. The jury is still out on whether we are able to resolve the underlying IP problems.

But so far, this has been a healthy process. When the United States initially began filing WTO cases against China, the Chinese leadership took offense. They seemed to regard these actions as threats to Chinese nationalism. Over time, however, I think Chinese leaders have discovered that a robust dispute settlement mechanism is really in their interests, as well.

First, there are countries all over the world filing cases against China, primarily dumping and subsidy cases. China has an opportunity to go to the WTO dispute settlement mechanism if it believes that those cases are being filed unfairly.

So China is starting to use the mechanisms of the

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## WTO Findings Against China

**Auto Parts**—On December 15, 2008, the WTO Appellate Body confirmed that China's discriminatory taxation of U.S. auto parts was inconsistent with Beijing's WTO obligations. Five months earlier, the WTO dispute settlement panel had found that China's regulations imposed an internal charge on U.S. auto parts resulting in unlawful discrimination under WTO rules.

The WTO Dispute Settlement Body ultimately adopted the Appellate Body Report. China, in turn, was obliged to announce its intentions to bring its tax laws into compliance with its WTO obligations or face a punitive U.S. response. In late August 2009, Chinese officials informed the Office of the U.S. Trade Representative that effective September 1, 2009 Beijing will eliminate the discriminatory charges that it had been imposing on imported auto parts.

**IPR Violation under TRIPS**—On January 26, 2009, a WTO dispute settlement panel found that important aspects of China's intellectual property rights (IPR) regime were inconsistent with Beijing's obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In April 2007, Washington filed a WTO complaint against China arguing that Beijing (1) failed to provide copyright protection to products that did not meet China's "content review" (censorship) standards; (2) improperly allowed counterfeit goods seized by China's customs authorities to enter the Chinese market once the infringing trademark was removed; and (3) wrongfully created legal thresholds that had to be met before pursuing criminal prosecution of counterfeiting and piracy.

In the January 26 decision, the WTO panel basically ruled in favor of the United States on the first two claims. With respect to the third, however, the international trade law body agreed with Washington that Beijing cannot set its thresholds for prosecution of piracy and counterfeiting so high as to ignore the realities of the marketplace. However, the WTO found that it needed more evidence in order to conclude that thresholds for prosecution in China's criminal law are overly high.

## Congressional Watch

**Burma Sanctions**—The House and Senate approved legislation on July 21 and July 23, respectively, that authorizes the annual renewal through 2012 of the ban on imports that would in any way support Burma's military junta. The bill also calls for maintaining the specific ban on the importation of jade and other gems from Burma.

Supporters, such as Rep. Joseph Crowley (D., New York), argued that the United States must maintain sanctions against the repressive Burmese government to show that "there are consequences for [the junta's] actions" against its own people.

Other lawmakers, while not denying the reprehensible nature of Burma's ruling regime, have argued that a sanctions-only approach to this closed country has been counterproductive. Sen. Jim Webb (D., Virginia), chairman of the Senate Foreign Relations Subcommittee on Asia and Pacific Affairs, has observed that China, in particular, has taken advantage of sanctions imposed by Western governments and increased dramatically its economic and political influence in Burma. In a *New York Times* op-ed on August 26, Webb advocated greater diplomatic engagement by the United States combined with a "careful" easing of sanctions. If met by reciprocity from the Burmese government, the United States might then undertake selected humanitarian projects, he proposed.

**Climate Change**—The Senate Foreign Relations Committee issued a report on July 27 entitled, "Broadening the Bilateral: Seizing the Opportunity for Meaningful U.S.-China Collaboration on Climate Change." The report, whose release deliberately coincided with the meeting in Washington on July 27–28 of the U.S.-China Strategic and Economic Dialogue (S&ED), maintains that China indeed recognizes the dangers of climate change and is prepared to work with the United States to address it. By the same token, the report's authors acknowledge that achieving an agreement on climate change that includes specific emissions reduction commitments from China "will continue to prove extraordinarily difficult."

With this in mind, the report recommends that the United States and China continue to deepen their ties, enhance mutual trust, and build support for a binding global agreement on climate change by focusing bilateral cooperation in three areas: (1) building a bilateral laboratory to tap the best minds from both countries; (2) creating ground-breaking environmental projects at scale that can help to commercialize near-to-market green technologies; and (3) establishing and training a clean energy corps to expand access to the low-cost energy efficiency solutions.

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## Congress Assesses S&ED

and security issues, they said. See <http://www.state.gov> for the S&ED joint press release that documents the issues discussed as well as for the MOU on climate change.

**Other Benefits**—Equally important, the S&ED serves a critical interpersonal function by enabling senior U.S. officials to get to know their Chinese counterparts. According to Shear, this interaction will facilitate more effective engagement on issues in the years to come. In addition, he pointed out that "by employing a whole-of-government approach," the dialogue facilitates interdepartmental discussions on cross-cutting issues both within and between each government.

**Congressional Ambivalence**—Lawmakers appeared ambivalent about the potential value and utility of the S&ED to complement existing bilateral discussions on various issues. Subcommittee members instead devoted most of the hearing to grilling witnesses about what the Obama administration, in their view, was not doing to address more forcefully China's still-poor record on human rights, its unfair trade and investment policies,

and Beijing's apparent unwillingness to use its economic and political influence to pressure North Korea to re-join the Six Party process and end its nuclear ambitions.

**Human Rights**—Rep. Dana Rohrabacher (D., California), an erstwhile critic of China's "authoritarian, gangster" regime, was skeptical that the decision made at the S&ED to hold a Human Rights Dialogue by the end of the year will produce meaningful change in Beijing's approach to human rights. He dismissed Mr. Shear's assertion that the United States "has no illusions about how the Chinese treat their people and has made its views crystal clear." There still is "no free press, no political opposition, and no religious freedoms in China," Rohrabacher argued, despite supposed improvements in Beijing's rule of law.

**Corporate Outsourcing**—Subcommittee Chairman Eni Faleomavaega (D., American Samoa) zeroed in on the massive bilateral trade imbalance. He questioned what percentage of China's estimated \$340 million imports are from U.S. corporate entities that have outsourced production there. Loevinger acknowledged that roughly 60 percent of China's exports are produced by multinational

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## Schwab Interview

WTO to defend its exports. China even is filing its own cases against other countries, including the United States. China is taking a more business-like approach to the cases and to the dispute settlement process. I think that is a good longer-term implication of this recent finding.

Second, Chinese authorities are finding they can use the WTO findings to pursue domestic reforms that for political reasons have been difficult for them to implement. Quite frankly, this also has been the case in the United States.

If you look at WTO findings against the United States, for example, the Foreign Sales Corporation (FSC) case or the so-called Byrd Amendment, it was very hard for the Bush administration to go back to Congress and un-do those pieces of law. But the Bush administration did just that. It was the right thing to do, both on the merits and because we lost at the WTO.

If it hadn't been for the WTO dispute settlement process, it is a real question as to whether we would have been able to revise those laws. I still happen to think that FSC was probably legal under the WTO. But we lost the case, and you do what you have to do to preserve the system. You just need to make sure that the system is fair to everyone.

Let's go back then to the Chinese case. What are the implications? If the Chinese ultimately do nothing in these cases or offer to do something that is so superficial that it clearly is not going to resolve the underlying problems and we end up retaliating, then I think everyone has lost.

The only lesson for Chinese exporters and Chinese authorities would be that if one does not comply with dispute settlement findings, it hurts; that there is pain associated with lack of compliance. But so far, so good—we think the auto parts case is resolved, just as we were able to settle earlier cases involving illegal subsidies and financial information services.

In the case of IPR, it would be a win for both sides if the outcome ultimately is an agreement between the United States and China about changes to the latter's system for protecting intellectual property. It is a success if there is settlement of the cases that results in better protection of intellectual property and less protectionism practiced by Chinese authorities when it comes to importation of foreign movies, books, DVDs, and so forth. It depends on how the cases play out and how serious and sincere both sides are in terms of resolving the real problems faced by IP owners in China.

I know that the U.S. interests in the IPR cases—the MPAA [Motion Picture Association of America], the Association of American Publishers, and the RIAA [Recording Industry Association of America]—are sin-

## WTO Findings Against the United States

**Foreign Sales Corporation (FSC)**—The Foreign Sales Corporation (FSC) provisions of the U.S. tax code were enacted in 1984 to replace the Domestic International Sales Corporation (DISC) provisions. Both were aimed at providing U.S. firms with tax exemptions on export income. In 1998, the EU filed at WTO case against the FSC on grounds that it served as an illegal export subsidy that gave U.S. exporters an unfair competitive advantage. A WTO dispute settlement panel ultimately ruled in favor of the EU, and the WTO Appellate Body confirmed this finding. Congress repealed the FSC provisions in 2004.

**"Byrd Amendment"**—The Continued Dumping and Subsidy Offset Act of 2000 (CDSOA), commonly known as the "Byrd Amendment" after its sponsor, Senator Robert Byrd (D., West Virginia), called for duties on imports that the U.S. government determined to be subsidized or unfairly priced to be distributed to the U.S. companies that originally filed the unfair pricing complaints. Previously, those funds were deposited in the U.S. treasury.

The EU filed a WTO case against the CDSOA, arguing that this law was inconsistent with WTO rules and an illegal response to dumping and subsidization. In January 2003, the WTO Appellate Body upheld a finding by a dispute settlement panel in September 2002 that the CDSOA, indeed, violated WTO rules. In December 2005, Congress passed legislation that repealed the CDSOA, but the bill included a transition clause that allowed for the continued distribution to of dumping and countervailing duties to U.S. petitioners up to September 30, 2007.

cerely committed to resolving the problems. They didn't want the cases as an excuse for the United States to retaliate against China.

And I believe it is in China's interest to resolve those problems. If you listen to Chinese officials, they do not want their country to be a haven for IP pirates. That's what they say. So now they have an opportunity to do something about it.

**USAPC: During the 1980s and 1990s, the United States and Japan were embroiled in numerous trade disputes. But U.S.-Japan relations ultimately have withstood trade-related rancor owing in no small part to the underlying political and security alliance.**

**We do not have a comparable foundation for relations with China. How can we keep U.S.-China relations on some semblance of an even keel against a backdrop of rising trade-related pressures?**

**Schwab:** The United States and China obviously have a very different relationship than the United States and Japan and the United States and the EU. It is a relationship, though, that is maturing. The depth of communication has improved markedly. We had the U.S.-China Strategic Economic Dialogue under the Bush administration. The Obama administration now has the U.S.-China Strategic and Economic Dialogue. So there is a lot of dialogue going on, and a lot of shared interests—as well as some differences. Fair enough. You have to deal with the

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differences like adults. I think that as long as both sides approach these issues responsibly then, yes, the relationship clearly can withstand trade-related pressures. And, as I indicated in my answer to your first question, we can capitalize on some of these cases.

What does that entail? First and foremost, it means that both countries have to be rigorous in their self-awareness about protectionism. The United States cannot be doing things unilaterally that are protectionist and inconsistent with our WTO obligations. Similarly, Chinese

authorities should not take actions that are contrary to either the letter or the spirit of their country's WTO obligations.

Both countries need each other's markets and money and will continue to need each other's markets and money for the foreseeable future. So that is a very significant tie that binds. It is a shared interest in not having one market or the other shut down or both shut down because both sides would be hurt.

And so, first, we have to be careful not to do things domestically that are contrary to our WTO obligations to each other. And second, when there are disputes, they need to produce a positive outcome rather than a

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### Regulatory Update

August and September featured important decisions on three cases that targeted China's trading practices:

**"Surge" of Chinese Passenger Vehicles and Light Truck Tires Imports**—On September 11, President Obama decided to impose tariffs on imports of Chinese tires for passenger cars and light trucks for a three-year period in the amounts of 35 percent *ad valorem* for the first year, 30 percent for the second, and 25 percent for the third. The President made this decision in accordance with Section 421 of the Trade Act of 1974, which authorizes the chief executive to impose import relief measures in cases where a surge of imported products cause or threaten to cause market disruption to U.S. producers of those products.

Beijing blasted Washington for "rampant protectionism" and September 14 filed a complaint at the World Trade Organization (WTO) that these tariffs violate global trade rules. If, after 60 days, the two sides cannot resolve the dispute through negotiations, China may request a dispute settlement panel to rule on the case.

The tariffs President Obama imposed, although substantial, are not quite as steep as those proposed by the U.S. International Trade Commission (ITC) in its report to the chief executive on July 9. The ITC had recommended *ad valorem* duties for three consecutive years in the amounts of 55 percent, 45 percent, and 35 percent.

**WTO Ruling Against China on Barriers to the Importation and Distribution of Foreign Copyrighted Materials**—On August 12, a World Trade Organization (WTO) dispute settlement panel upheld a U.S. complaint that China unfairly restricts the importation and distribution of U.S. copyrighted materials, such as theatrical films, DVDs, music, books, and journals. The WTO panel called on China to comply with its obligations as a WTO

member to allow U.S. companies to import these products into China and to eliminate discriminatory requirements faced by imported products and their U.S. distributors in China.

Representatives of the U.S. entertainment industry expressed optimism about the WTO's decision, saying it "points a way forward." This sector long has argued that China's restrictions are aimed not only at controlling potentially objectionable content, but also at protecting domestic industry.

However, some trade experts were less sanguine about its short-term benefits, speculating that Beijing likely would appeal the ruling. The appeal process typically takes many months to work itself through the slow, deliberative WTO dispute-resolution system.

**Preliminary Finding of Subsidization of Steel Pipe Imports from China**—On September 9, the U.S. Department of Commerce issued a preliminary finding that Chinese producers of steel pipes used primarily by the oil and gas industry received government subsidies ranging from 11 percent to 31 percent in violation of global trade laws. Commerce estimated that the value of steel pipe imports from China more than quadrupled from 2006 to 2008, soaring from \$632 billion to \$2.6 billion, which makes this one of the largest trade cases Washington has pursued against Beijing.

Commerce instructed U.S. Customs and Border Protection to collect cash deposits or bonds from importers to reflect the extent of subsidies they received. Commerce will make a final determination in late November. If in early January 2010 the U.S. International Trade Commission (ITC) then finds that imports of steel pipe from China "materially injure or threaten material injury" to U.S. industry, Commerce will issue a countervailing duty order.

## Schwab Interview

negative outcome. If the outcome of a dispute, as I alluded to, is retaliation—which it can and should be if you get to the end of the line and nothing has been fixed—you have lost the opportunity to implement reforms and to help the real victims of an unfair trade practice.

**USAPC: Many U.S. trading partners are pursuing their own Free Trade Agreements (FTAs) with key Asian nations, such as Korea and the nations of ASEAN [Association of Southeast Asian Nations]. The U.S.-Korea FTA, for one, remains stalled in Congress owing to lawmakers' concerns about the treatment of certain sectors.**

**In economic terms, how badly disadvantaged would be United States be by the conclusion of these other FTAs? Are we seriously missing the boat?**

**Schwab:** This is a serious problem for the United States. We are in danger of shooting ourselves in the foot. Korea is an important market. The Asia Pacific region holds multiple important markets for the United States. U.S. industry, agriculture, and services are actively engaged in this part of the world.

If we sit on hands much longer with respect to these FTAs—and not just the KORUS FTA [U.S.-Korea Free Trade Agreement], but also the agreements with Colombia and Panama—other countries will take advantage of that, conclude their own deals, and we will be disadvantaged. It won't be a neutral outcome. It will be a negative outcome for U.S. exporters.

The obvious question is will U.S. manufacturers then feel that they must start investing and producing in Asian countries to take advantage of these networks of FTAs when they would rather be producing in the United States and exporting to these Asian countries? That is a distinct possibility, and we will have brought that on ourselves by not moving the KORUS FTA and other trade agreements.

**USAPC: How would you evaluate the prospects for a U.S.-Japan FTA? Or will Japan's resistance to liberalizing its agricultural sector forever stand in the way of such an agreement?**

**Schwab:** That is a difficult question to address in light of recent elections in Japan that have produced an important change in leadership. Let's see what the new Hatoyama government is willing to do.

Japan also is in danger of missing the boat on trade because it cannot appear to do a deal with any country that is a competitive agricultural exporter. Yes, there are

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## New Japanese Leader Is Committed To Alliance, Campbell Says

Assistant Secretary of State for East Asia and Pacific Affairs Kurt Campbell expressed confidence September 2 that the foundation for U.S.-Japan relations going forward will remain strong. "Patience, commitment, and solidarity" are the watchwords for bilateral relations in the weeks and months to come as both countries adjust to the change of Japan's ruling party, Campbell told a public program in Washington, D.C. "Transitions in democracies often play out over several months [and] it will take time for [the new government of Democratic Party of Japan leader Yukio Hatoyama] to fully enunciate its policies" on any number of issues, he said.

On August 30, the opposition Democratic Party of Japan (DPJ) won a landslide victory in elections for Japan's lower house, seizing control from the long-ruling Liberal Democratic Party (LDP). The anticipated elevation of DPJ leader Hatoyama to prime minister initially raised concerns in some American quarters. Campaign rhetoric and an op-ed piece that appeared on the *New York Times* website suggested that the new government would favor pursuing a foreign policy more independent of the United States.

Addressing these concerns, Campbell said that for the U.S.-Japan alliance to move forward, a degree of independence is essential. "We'd like to see Japan play a stronger leadership role in Asia and in developing relations with other partners. The United States is comfortable with this," he said. The assistant secretary underscored the fact that when President Obama spoke with Mr. Hatoyama earlier in the day to congratulate the DPJ leader on the election results, the two leaders expressed their desire "to build an even more effective partnership."

Michael J. Green, a professor at Georgetown University and Japan chair at the Center for Strategic and International Studies, also participated in the program. Green highlighted both the ideological diversity and political ambitions within the new ruling party. The DPJ probably will want to focus its political capital on improving the domestic economy in anticipation of upper house elections in the summer of 2010, he proposed. In view of President Obama's popularity in Japan, Green was skeptical that a DPJ-led government therefore would want to "fight openly with the United States" on foreign policy and security issues that might divide liberal and conservative elements and weaken the party.

Steven Clemons of the New America Foundation, another program speaker, anticipated that, as has been the case in U.S. politics, the imperatives of leadership would cause Hatoyama to soften his campaign rhetoric. ♦

### **Asia Pacific Economic Cooperation forum (APEC):**

- **APEC Meeting of the Ministers Responsible for Trade**—The APEC Ministers Responsible for Trade, meeting in Singapore on July 21–22 pledged to give greater focus to ensuring that economic growth is more inclusive and that its benefits are spread more widely. They instructed the APEC Senior Officials to explore the concept of “inclusive growth,” map existing APEC activities that support inclusive growth, highlight areas where APEC can do more, and outline a strategy at the 2009 APEC Ministerial that implement this concept.

The aim of the strategy should be to accelerate economic restructuring to position APEC economies for recovery and to strengthen social safety nets and labor market systems to ameliorate the impact of the economic crisis on peoples’ lives, the ministers said. See <http://www.apec.org> for the statement of the trade ministers’ chair.

### **Pacific Economic Cooperation Council (PECC):**

- **“Economic Crisis and Recovery: Enhancing Resilience, Structural Reform, and Freer Trade in the Asia-Pacific Region”**—The Singapore National Committee for Pacific Economic Cooperation, with support from the Institute for Policy Studies, is hosting this conference on October 9–10 in Singapore. Its objective is to provide recommendations on salient business issues to leaders who will convene in Singapore the following month for the 17th APEC Leaders’ Summit.

Amb. J. Stapleton Roy, Chair of the U.S. Asia Pacific

Council (USAPC) and Director of the Kissinger Institute on China and the United States, will speak on the topic, “The Asia-Pacific in the New Global Governance.” In addition, Prof. Peter Petri, Carl J. Shapiro Professor International Finance at Brandeis University and a USAPC member, will address, “Crisis and Recovery in the Asia-Pacific Region: Where We Are and What Needs to be Done.”

### **Key Official Meetings: September–October 2009:**

- **U.S. Trade Representative Ron Kirk** joined trade officials of more than 20 member nations of the World Trade Organization (WTO) for an informal meeting aimed at setting the stage for the resumption later this year of formal negotiations on a multilateral trade agreement, September 3–4, New Delhi, India.

- **President Obama**, joined by other global leaders, will address the 64th meeting of the United Nations General Assembly, September 23, New York.

- **President Obama** and leaders of the G-20 nations will convene a summit aimed at continuing coordinated efforts to tackle the economic crisis, climate change, and other global challenges, September 24–25, Pittsburgh, Pennsylvania, USA.

- **U.S. Secretary of the Treasury Timothy Geithner** (or a designated senior official) likely will attend the Annual Meeting of the Board of Governors of the World Bank and the International Monetary Fund (IMF), October 6–7, Istanbul, Turkey.

## Fiji, Climate Change Dominate Hearing On U.S.-Pacific Policy

Fiji’s longstanding political problems and the vulnerability of the Pacific islands to sea-level rise and global warming dominated a hearing on July 29 called by Hon. Eni Faleomavaega (D., American Samoa), chairman of the House Foreign Affairs Subcommittee on Asia, the Pacific, and the Global Environment. The subcommittee chair detailed his intensive efforts—three visits during May–July—to advise Fiji’s interim prime minister on how Washington might offer expertise and resources to assist his country in achieving “equal suffrage and other political, economic, and social reforms.”

**Fiji’s History**—The subcommittee chair provided an overview of Fiji’s long colonial history, its severe ethnic problems, and the fact that within the past 20 years, the

island nation has experienced four military coups, one civilian coup, and three different constitutions. He sought to underscore the “complicated” nature of Fiji’s political situation, which requires a more nuanced and sophisticated U.S. policy. Simply demanding immediate elections as a way of returning Fiji to stability and democracy would only serve to set the stage for another military coup in the near-term, Faleomavaega maintained.

**U.S. Regional Engagement**—The subcommittee also urged Washington to become more directly involved in the regional forums that are focused on the political problems in Fiji, such as Post-Forum Dialogue (PFD) of the Pacific Island Forum. Alcy Frelick, director for Australia, New Zealand, and Pacific Island Affairs at the U.S. Department of State, confirmed that both she and Kurt Campbell, assistant secretary of State for East Asian and Pacific Affairs, and other senior members of an interagency delegation indeed would attend the PFD on August 7 in Cairns, Australia. In addition to examining

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## U.S.-Pacific Policy

Fiji's political problems, Ms. Frelick said the PFD will consider the impact of the global economic crisis on Pacific island countries. "The strong U.S. presence in Cairns will demonstrate our commitment to the region and provide an opportunity for the United States to enhance cooperation with other partners," she said.

**U.S.-Fiji Relations**—With respect to U.S.-Fiji relations, Ms. Frelick acknowledged that the military coup of December 2006 has strained bilateral relations. However, the United States continues to maintain full diplomatic relations with Fiji and "look[s] forward to closer relations when [Fiji] once again resumes its leadership role in the Pacific by restoring democracy to its people."

Ms. Frelick emphasized that the sanctions Washington imposed on Fiji following the coup—including a cessation of military assistance, bans on visas for coup leaders, suspension of lethal military sales, and restrictions on bilateral engagement—are targeted against the military regime. The United States continues to provide assistance to the people of Fiji, she said, particularly aid aimed at supporting a "credible return to democracy." This would include supporting election reform efforts and strengthening civil society, a free press, and an independent judiciary.

Ms. Frelick suggested that the United States would continue to be sensitive to the concerns of Pacific island leaders and the statements and actions of the Pacific Island Forum, which suspended Fiji earlier this year. "We believe that the return to democracy in Fiji will depend on the restoration of such basic human rights as freedom of speech and assembly," she said.

**Letter to Clinton**—Faleomavaega thanked Ms. Frelick for her testimony, but reiterated his view that Washington needs a new approach toward Fiji. On July 30, the subcommittee chair raised this issue directly with Assistant Secretary Campbell in anticipation of his trip to Cairns for the PFD. He followed this up with a letter to Secretary of State Hillary Clinton, which outlined his views about how the United States could help Fiji resolve its political problems.

**Climate Change**—Witnesses and subcommittee members also engaged in an involved discussion about the threat to low-lying Pacific Island nations, such as Kiribati, the Marshall Islands, and Tuvalu, posed by rising sea levels caused by global warming. H.E. Marlene Moses, chair of the Pacific Small Island Developing States (PSIDS) and ambassador of the Republic of Nauru to the United States, called on Washington to support mitigation strategies proposed by the Federated States of Micronesia to the United Nations Framework Convention on Climate Change. She further called on the United States to extend its renewable energy program to the

### Member Op-Eds

This month's column highlights commentary by Dr. Clyde Prestowitz, President of the Economic Strategy Institute. Dr. Prestowitz argues that a decision by President Obama to impose tariffs on Chinese tire imports would do far more to help U.S. workers and America's economic welfare than adherence to "simplistic, tired" free-trade orthodoxy.

- "Obama Can Help Free Trade With Tariffs," by Clyde Prestowitz, Economic Strategy Institute, *Financial Times*, September 10, 2009 Available at <http://www.ft.com> and <http://www.econstrat.org>

*USAPC members are encouraged to alert USAPC Director Mark Borthwick about published or forthcoming opinion pieces that they feel would be of interest to Council members and the broader readership. Contact him at [borthwim@eastwestcenter.org/](mailto:borthwim@eastwestcenter.org/).*

Pacific island community. "For the Pacific, climate change is an issue of national security that threatens the lives of our people and the stability of our governments," Amb. Moses said.

**Energy Bill**—Chairman Faleomavaega noted that "The American Clean Energy and Security Act," which passed the House on June 26, includes a provision that would establish an overseas assistance program for countries that are particularly vulnerable to the effects of climate change. He invited input from Amb. Moses and other Pacific island ambassadors who attended the hearing but did not offer formal testimony on how this provision of the bill could be revised to better address their needs. The subcommittee chairman then pledged to work with key energy policy lawmakers in the House and Senate to ensure that these changes are incorporated into the final conference report.

A complete transcript of this hearings should be available shortly at <http://foreignaffairs.house.gov/>. ♦

### Postscript: Engaging Fiji

On September 9, Hon. Eni Faleomavaega (D., American Samoa) commended Prime Minister Tuilaepa Sailele Malielegaoi for inviting Fiji's interim leader, Commodore Josaia Voreqe "Frank" Bainimarama, to visit Samoa to explore how Fiji can move back to a democratic system using Samoa as a model. Tuilaepa's invitation "represents precisely the sort of engagement that the rest of the world . . . should offer Fiji," Faleomavaega said.



## Congress Assesses S&ED

corporations from Taiwan, Japan, South Korea, and the United States.

“Washington is very concerned about the impact of the huge economic and trade imbalance,” he said. Through the S&ED, U.S. officials were able to secure commitments from Beijing that over time will begin to rectify the imbalance and alter the attractiveness of China for multinational foreign investors, he said. These include reforms to China’s macroeconomic and financial policies as well as measures aimed at boosting its social safety net.

**Financial Crisis**—When probed further by Faleomavaega about why China was not as adversely affected by the global financial crisis as the United States and other developed countries, Loevinger explained that the under-development of China’s financial sector, in effect, provided some insulation.

But this same lack of development also makes it far more difficult for the average Chinese to invest, use credit cards, and partake of other financial services routinely offered by U.S. banks and financial institutions, he said. Loevinger also noted that the United States “made many mistakes,” which ended up crippling its financial sector.

**North Korea Policy**—Rep. Ed Royce (R., California) was not assured by Shear’s statement that the United States and China “affirmed the importance of the Six-Party Talks and continuing efforts to achieve denuclearization” of North Korea. “This report [on the S&ED] is light on how China will use its leverage on North Korea and provide the United States with adequate assistance in cracking down on North Korea’s illegal financial activities like we did in the Banco Delta Asia case,” he said. “China is the linchpin . . . but [Beijing] continues to prop up North Korea,” Royce charged.

Shear said that Beijing worked closely with Washington in drafting U.N. Resolution 1874, which is the strongest resolution to date sanctioning North Korea for its nuclear tests. He added that China has restricted energy supplies to North Korea in the past, and U.S. officials encouraged their Chinese counterparts to vigorously implement Resolution 1874 by taking similar actions.

**Unfair Trade and Investment Practices**—Royce also railed at the U.S. Department of Commerce for “promoting China as an investment site” even though American investors are routinely used and abused by the Chinese. “It’s the same story about rampant corruption,” Royce charged.

Loevinger, who previously was posted in Beijing, agreed that corruption and regulatory opacity can make it very difficult for American companies to do business in China. “But China continues to attract investment,

Loevinger observed, “because American companies have made money from these investments—even though it isn’t nirvana.” He noted that the United States has won several unfair trade cases against China at the World Trade Organization (WTO) and would continue to file complaints at the WTO if China does not adhere to global trade rules.

**Engagement Preferred**—Private sector witnesses provided a mixed assessment of S&ED as a mechanism for consultation and problem management. Fred Bergsten, director of the Peterson Institute for International Economics, and John Podesta, president of The Center for American Progress, both endorsed the S&ED as a framework for engaging China on issues of global importance, such as climate change.

Bergsten, in particular, lauded the S&ED as an effective means for the United States and China to move toward the creation of an informal G-2 that could provide joint leadership of the world economy. The G-2 entity would “supplement, not supplant” existing global economic entities, including the G-7, G-8 and newly created G-20, so they all can function more effectively, he said. “The United States can’t possibly resolve our economic prob-

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*China continues to attract U.S. investment because American companies have made money from these investments—even though it isn’t nirvana*

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lems without dealing with the second-largest global economy,” Bergsten maintained.

Podesta rejected the G-2 concept, arguing that “we need a whole community of nations working together to address serious problems that plague us.” But he agreed that both countries’ commitment to solving global threats is “pivotal.”

**Alternative View**—Randall Schriver, a founding partner of Armitage International, offered yet another perspective on the S&ED. Although not as critical as Rohrabacher, he nevertheless parted ways with Bergsten and Podesta in extolling the dialogue’s benefits. He said that the S&ED, in effect, has placed China in a position of priority in U.S. foreign relations that it has not yet earned.

“We have no comparable dialogue with Japan, Korea, or other Asian partners [which] can engender feelings of insecurity among our closest allies,” Schriver said. Moreover, the “cupboard is bare on North Korea, and [notwithstanding the MOU] we have yet to see constructive cooperation on climate change.” He advocated closer consultations with our Asian partners like Japan and South Korea “so China understands we have other, stronger allies with whom we will continue to work.” ♦

## Schwab Interview

countries that are exporters of manufactured goods that will do deals with Japan. However, some of the most interesting markets for Japan happen to be countries that also produce agricultural commodities. Japan, in its effort to protect its highly political, but largely inefficient farm sector, also is in danger of missing the trade boat.

But at this stage it still is hard to know that the new Japanese administration will do. And, quite frankly, it is hard to know what the Obama administration is going to do with its trade policy because, as we speak, that still is very unclear, so we'll see.

**USAPC: About a year ago, Washington announced that it would begin negotiations to join the Trans-Pacific Strategic Economic Partnership (TPP) agreement, a FTA between Singapore, Chile, New Zealand, and Brunei Darussalam. Some trade analysts have expressed optimism that the TPP could serve as a catalyst for a broader regional trade accord. How would you evaluate those prospects?**

**Schwab:** When we launched the TPP negotiations, indeed, it was under the assumption that this would be a springboard for a broader Asia Pacific trade agreement. This was a starting point because there was a group of countries that had come together with a very open but incomplete free trade agreement which they were interested in building upon in terms of adding provisions pertaining to services and investment as well as including more countries.

And so, if you think about the conversations we had at the APEC summits in 2007 and 2008 about the creation of an Asia Pacific trade agreement along the lines of the FTAAP [Free Trade Area of the Asia Pacific]<sup>1</sup>, we determined that one could either (1) start with a core agreement and build out from there, (2) develop an agreement from a blank sheet, or (3) begin with a network of bilateral or regional deals and try to knit them together. Those are three different paths to realize an Asia Pacific trade agreement.

The TPP is a path that I think has a great deal of potential. However, it is too early to know if the Obama administration will proceed with this or go in a different direction.

**USAPC: There are serious trade ramifications from certain provisions in the climate change legislation that**

<sup>1</sup>The proposed Free Trade Area of the Asia Pacific (FTAAP) is aimed at further integrating the economies of the Asia Pacific by liberalizing trade and investment practices among the 21 member economies of the Asia Pacific Economic Cooperation (APEC) forum.

**passed the House and is pending in the Senate. How would you propose addressing the problem of carbon leakage in a way that does not violate of U.S. international trade commitments?**

**Schwab:** First and foremost, unless you are able to reach some accommodation with China and India about their appropriate contribution to the solving the problem of climate change, it is going to be very hard to imagine any outcome that will be effective. If you look at the Kyoto accord, even without the United States, very, very few countries met their commitments.

And some that supposedly have met their commitments have done so in ways that arguably have not done anything to really remedy climate change. So the approach the Bush administration took was not to act unilaterally, but to try to act in concert with other developed countries and the advanced developing countries.

The Obama administration apparently has decided to act more unilaterally through the legislative process. It is unclear what the final bill will look like. But I think it

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*It would be a mistake not to be actively calling upon the trade ministers to consider the trade and competitiveness implications of a climate change regime.*

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would be a mistake not to be worried right now and not to be actively calling upon the trade ministers to consider the trade and competitiveness implications of a climate change regime—because there definitely are trade and competitiveness implications.

The risk will be that countries will want to be free riders on the system, and yes, the developed countries have the largest obligation here. But unless and until India and China are prepared to take some degree of meaningful responsibility, it is going to be hard to reach a positive outcome. And then, of course, there is the risk that cap and trade legislation becomes a convenient excuse for protectionist action.

**USAPC: Some trade experts have been critical of what they refer to as the “centrality” of FTAs in U.S. trade policy. These critics have proposed that U.S. trade policy should be re-oriented away from FTAs and focused more on promoting industries with growth potential for the United States, such as environment, energy, and medical technology.**

**Two questions: (1) What is your response to the critique about the Bush administration’s “over-reliance” on pursuing gold-standard FTA’s, and (2) Would it be wise for the United States switch gears and pursue multilateral accords similar to the WTO’s Information**

*continued on page 11*

## Schwab Interview

### Technology Agreement (ITA) in the absence of movement on a multilateral trade agreement?

**Schwab:** Concerning the latter question, I think this is a “both and” proposition, not an “either or” approach. With respect to the sectoral approach, if one goes back two or three years, the environmental goods and services agreement that the Bush administration launched with our EU counterparts and worked hard to bring China on board would eliminate tariffs globally on at least 47 clean energy technologies and products that the World Bank identified as being of critical interest.

We have estimated that through such an agreement, which would eliminate tariffs on items such as photovoltaic cells, solar panels, scrubbers, and so forth, we could increase trade in those products by up to 14 percent annually—which also would have a real, near-term impact on climate change. That agreement has not yet been pursued by the new team, but we certainly pressed hard for it.

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*The fact of the matter is you need a proactive trade policy and sitting on your hands is not a proactive policy. . . The United States risks missing the boat.*

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By the way, we also advocated expanding the ITA. In that case, though, the EU had begun to raise tariffs on certain products the United States, China, Japan, and other trading partners agree are already covered under the original ITA. So that continues to be a problem. Nevertheless, we felt it was important to expand the ITA to cover newer technologies.

That said, the world is negotiating bilateral and regional deals. I don’t happen to think there is any magic in regional deals. I think plurilateral agreements among like-minded countries, like the TPP, make a huge amount of sense. I think bilateral trade agreements with large and growing markets, like Korea, make a huge amount of sense in and of themselves. It’s sort of a Willy Sutton issue: You go where the money is.

Those are the deals you ought to be negotiating, and if you are not negotiating those deals, your trading partners are. And the minute that they negotiate bilateral or regional deals that leave us out, not only do we lose the opportunity of having a preferential trade arrangement with rapidly emerging markets for U.S. exports, but our producers become disadvantaged relative to their European and/or Japanese and/or ASEAN and/or Australian competitors.

**USAPC:** How about the criticism that the centrality of FTAs in U.S. trade policy ultimately has not served this country well in terms of bottom line economic benefits?

**Schwab:** I think all you have to do is look at the trade data. U.S. exports to our FTA partners increased 40 percent faster than our exports to the rest of the world. If you look at the last ten or eleven FTAs that were negotiated under the Bush administration, as opposed to the more mature ones, U.S. exports increased 80 percent faster than our exports to the rest of the world.

Well, I’m sorry, but those are material benefits. Those are real benefits. And there are small, medium, and large U.S. companies that are manufacturers or service providers or agricultural producers that have the sales to those markets to prove it.

The issue of centrality of FTAs to a trade policy is arguably different. You must pick the right countries with which to negotiate your bilateral, regional, or plurilateral deals, just as you have to pick the right sectors for sector-wide deals.

But the fact of the matter is you need a proactive trade policy. And sitting on your hands is not a proactive trade policy. As I said earlier, the United States risks missing the boat.

I would argue that during the Bush administration, the multilateral side of the equation was as important, if not more important than bilateral, regional, or sectoral accords. I certainly spent more time as USTR on the Doha Round [of multilateral trade negotiations] than I did on the bilateral deals, and we negotiated quite a number of bilaterals during my tenure and moved many of them through the Congress.

But we spent untold man years on the Doha Round, which clearly was central to the Bush administration’s trade policy. To my mind, strong multilateral deals are always preferable to bilateral or regional ones. But the Doha Round still languishes and at least our FTAs continue to move us in the right direction.

The new administration has to figure out what it wants to do on trade policy, beyond enforcement. And I certainly support enforcement. We were very active in terms of enforcement. All these Chinese cases we are discussing now were filed during the Bush administration across the range of potential trade policy initiatives. The new administration has to figure out whether or not it wants to be proactive on trade policy. ♦

*Amb. Susan C. Schwab, who served as U.S. Trade Representative from June 2006 to January 2009, currently is Professor, School of Public Policy, at the University of Maryland.*



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