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Achieving Victory in the International Trade Obstacle Course: The 2007 Farm Bill and Passive Chinese Behavior

Caitlin E. Carr*

I. Introduction

The World Trade Organization (WTO) launched its Doha Round of trade negotiations following the September 11th terrorist attacks on America with hopes of uniting the international community under the umbrella of international trade.\(^1\) In the past, the WTO has produced successful trade negotiations with the Kennedy Round (ending in 1967),\(^2\) Tokyo Round (ending in 1979),\(^3\) and the Uruguay Round (ending in 1993).\(^4\) However, the world community expected the Doha Round to be more difficult to negotiate than those in the past.\(^5\) Since the previous Uruguay negotiations, the WTO had greatly increased in size, to 150 nations.\(^6\) The addition of the consensus-decision rule compelled all participants to agree to the outcome of the negotiations.\(^7\) Furthermore, as a result of its increased membership, the WTO added a growing group of developing countries that had veto power at every stage of the negotiation process.\(^8\) The increased presence of poorer nations in the

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\* J.D. Candidate, The Dickinson School of Law of the Pennsylvania State University, 2008; B.A. Bowling Green State University, 2005. I would like to thank all of my friends and colleagues who were incredibly supportive and understanding through the writing process. I would also like to extend a special thank you to my parents, Tim and Jill Carr, for their constant love and support along the way.

3. See id.
4. See id. See also C. Fred Bergsten, Rescuing the Doha Round, FOREIGN AFF., Dec. 2005 (WTO Special ed.).
5. See id.
7. See Bergsten, supra note 5.
8. See id.
WTO made it clear to developed nations like the United States (U.S.) and those in the European Union (E.U.) that there would be no Doha agreement unless developing nations stood to gain something from the agreement.9 In addition, the Doha negotiators faced the expiration of President George W. Bush’s fast-track Trade Promotion Authority (TPA) in June 2007.10

This Comment focuses on two major stumbling blocks the Doha negotiators will have to overcome to reach a successful final agreement. The first is the potential passage of the 2007 Farm Bill by the U.S. Congress. This comment will demonstrate that the terms of the Farm Bill will have a strong effect on the global perceptions of the U.S.’s commitment to the continued expansion of international trade under WTO guidelines. The second issue for discussion is China’s role in the Doha negotiation process. China will have to show increased leadership in the global trading regime in order to conclude the already overdue culmination of the Doha Round.

II. The Doha Round: Past to Present

The WTO’s Doha negotiations began on November 11, 2001, with the U.S. encouraging the other WTO Member States to participate.11 The WTO termed the agenda for the Doha Round as a “development agenda” comprised of five main commitments.12 These commitments included embracing trade liberalization,13 focusing on developing countries’ needs,14 assisting developing countries through effective participation in the international trading system,15 working with the Bretton Woods institutions (International Monetary Fund and World Bank),16 and ensuring the effective participation of all WTO Member States.17

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10. See Trade Act of 2002, 19 U.S.C. § 3803 (2006) (giving Trade Promotion Authority to the President allows exclusive and absolute power in negotiating and concluding trade agreements that will then be presented to Congress for an up or down vote with no amendments).
12. See TREBILCOCK & HOWSE, supra note 2, at 498 (stating that trade liberalization means the rejection of protectionism).
13. See id.
14. See id. (asserting that international trade plays a large role in promoting economic development and in alleviating poverty).
15. See id. (addressing the marginalization of least-developed countries).
16. See id. (stating that trade solely cannot address the challenges of the rapidly changing international environment).
17. See TREBILCOCK & HOWSE, supra note 2, at 498.
A. The Emergence of the Agricultural Problem

As the Doha negotiations commenced, market access to agricultural and industrial goods emerged as the most hotly debated topic.\textsuperscript{18} Agricultural products became a hotbed for discussion because developing countries wanted developed countries to drop domestic support of agriculture, improve market access and phase out all forms of export subsidies.\textsuperscript{19} In addition, developing countries lobbied for special and differential treatment with regard to their own agricultural goods in an effort to make them more competitive with developed nations.\textsuperscript{20} Those demands from developing states were made in the spirit of the Doha agenda, that is, “to level the playing field in international trade through the use of concessions for these developing nations, most of which are heavily dependent on agriculture.”\textsuperscript{21}

Before attending the Doha Round, the U.S. knew agriculture would be the central issue between the negotiating parties.\textsuperscript{22} The Bush Administration, through Robert Zoellick, a former U.S. Trade Representative, felt confident it could retain a good bargaining position on the agriculture issue.\textsuperscript{23} However, many developing countries set out to prove the U.S. wrong.\textsuperscript{24} Developing countries stated that during the course of Doha negotiations the U.S. should not expect to strong-arm developing nations into agreement.\textsuperscript{25} In particular, Ghana noted concern about the upcoming 2002 Farm Bill being debated in Congress and its potential to protect American farmers to the detriment of agriculture production on a global scale.\textsuperscript{26}

1. Two Steps Backwards with the Passage of the 2002 Farm Bill

In May 2002, any upper-hand credibility the U.S. retained with regard to agricultural subsidies was lost in the eyes of many developing

\textsuperscript{18} See Under Attack, supra note 12.
\textsuperscript{19} See TREBILCOCK & HOWSE, supra note 2, at 499.
\textsuperscript{20} See id. (arguing that special and differential treatment is necessary to protect developing countries' development and food security needs).
\textsuperscript{21} Marlen V. Ronquillo, Sunday Stories Feckless in Doha, MANILA TIMES, Aug. 27, 2006.
\textsuperscript{22} See Europe's Meagre Harvest, ECONOMIST, Jan. 25, 2003, at 70.
\textsuperscript{23} See Daniel Altman, Global Trade Looking Glass: Can U.S. Have It Both Ways?, N.Y. TIMES, Nov. 9, 2002, at C1 (“Doha wouldn’t have happened if it weren’t for the United States. . . . The United States has an added responsibility for the trading and international economic system as a whole.”).
\textsuperscript{24} See id.
\textsuperscript{25} See id. (stating that Malaysia’s minister of international trade and industry had told the U.S. that, “[n]o one can force anyone to do anything there, least of all the United States,” in response to potential strong-arm tactics).
\textsuperscript{26} See id.
countries with Congress's passage of the 2002 Farm Bill. That bill increased domestic subsidies for American farmers by 80 percent, which inflamed the developing world. Developing countries argued that the subsidies within the 2002 Farm Bill encouraged American farmers to over-produce, which would cause prices to fall in international markets. The Farm Bill, however, kept the U.S. within the WTO mandated limit of $19 billion per year in "aggregate measures of support" (AMS) that were negotiated during the preceding Uruguay Round. Still, the Farm Bill greatly increased subsidies on American soybean, wheat and corn crops. The passage of the 2002 Farm Bill was seen as a signal to developing countries that Congress and the Bush Administration would strive to protect American farmers at all costs. The Agriculture Minister of Thailand (a developing country) described the view as:

This is the way of rich countries.... They tell us to open our markets; we do but they don’t stop giving their farmers subsidies. Now American farmers will be given money to grow cheap rice and push down the world price for the next six years. That pushes our poorest farmers out of business.

In 2007 a new Farm Bill will be up for debate before Congress and it too could have drastic consequences for the success of the Doha negotiations.

2. Attempts at a Remedy to the International Backlash

In July 2002, a few months after the passage of the Farm Bill, the U.S. made an attempt to remedy its relationship with other WTO nations by putting an ambitious agriculture proposal before the WTO that attempted to recover some of their lost support from the 2002 Farm Bill

29. See Becker, supra note 28.
30. See id.
31. See TREBILCOCK & HOWSE, supra note 2, at 335-36 (explaining that AMS is a common standard measuring domestic support of each country's agriculture industry).
32. See Dept. of Agriculture Foreign Agriculture Service, U.S. Proposal for Global Agricultural Trade Reform, available at http://www.fas.usda.gov/itp/wto/proposal.htm (last visited June 3, 2007) (noting that the U.S.'s AMS ceiling is far below that of Europe or Japan, who have ceilings at $60 billion per year and $30 billion per year respectively) [hereinafter U.S. Proposal].
34. See Becker, supra note 28.
35. Id.
36. See THOMPSON, supra note 10.
enactment.\textsuperscript{37} That new proposal called for a large reduction in agricultural tariffs around the world,\textsuperscript{38} complete elimination of export subsidies\textsuperscript{39} and reductions in domestic subsidies to farmers.\textsuperscript{40} The E.U. and Japan, all having farmer-protectionist policies, criticized the U.S. proposal.\textsuperscript{41} These nations use high tariffs and provide large amounts of domestic subsidies to agricultural products.\textsuperscript{42} Furthermore, both the E.U. and Japan noted that the U.S. proposal put much of the international trade reform burden on them, while having little internal effect in the U.S.\textsuperscript{43} Over the next year, the E.U. and the U.S. negotiated over the U.S. proposal and eventually came to an agreement on how to jointly approach the agriculture dilemma.\textsuperscript{44} This combined effort called for the U.S. and the E.U. to reduce protections for their farmers and also called for some subsidies, such as those designed to improve environmental standards on farms, to be placed in a separate category that was not considered protectionist.\textsuperscript{45} The joint effort between the U.S. and the E.U. culminated in September 2003 when all WTO Member States came together in Cancun, Mexico for a Ministerial Meeting where the U.S. and the E.U. made their negotiated agreement public.\textsuperscript{46}

\textbf{B. The First Stalemate: The Cancun Ministerial Meeting}

As a result of the joint U.S./E.U. announcement of their agreement on agriculture, approximately twenty developing countries walked out of the Cancun talks.\textsuperscript{47} Brazil and India, two emerging agricultural powers and leaders of the G-20,\textsuperscript{48} led the coalition of developing nations in the

\textsuperscript{37} See U.S. Proposal, supra note 33.
\textsuperscript{38} See id. (proposing the use if a harmonizing formula for reducing all agricultural tariffs so that no individual tariff exceeds 25 percent after the five year phase-in period).
\textsuperscript{39} See id. (noting that these reductions would be phased in over a five year time period in equal increments).
\textsuperscript{40} See id. (proposing the use of a formula to limit all domestic support for every country to five percent of all agricultural production).
\textsuperscript{41} See WTO Chair Cites Good Progress in Farm Trade Talks, \textsc{Bureau Nat'L Aff. Trade Daily}, Nov. 12, 2002.
\textsuperscript{42} See id.
\textsuperscript{43} See id.
\textsuperscript{45} See id.
\textsuperscript{47} See id.
\textsuperscript{48} See \textsc{Thompson}, supra note 10 (noting that the G-20 is comprised of Brazil, Argentina, Bolivia, Chile, China, Cuba, Egypt, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Philippines, South Africa, Tanzania, Thailand, Venezuela, and Zimbabwe); see also Members, G-20, http://www.g-20.mre.gov.br/members.asp (last visited June 3, 2007) (adding that Uruguay and Guatemala are also members).
walkout. The G-20 was established immediately prior to the talks in Cancun in an effort to enforce the Doha mandate for development in developing countries. The developing countries that left Cancun after the announcement of the U.S./E.U. compromise attributed their abandonment of the talks to the "less aggressive stance the United States seemed to take in regards to its earlier WTO agriculture proposal."

Through its agreement, the U.S. made significant compromises with the E.U. to protect the Common Agricultural Policy of the E.U., which provided huge subsidies to European farmers. Subsequently, in an attempt to remedy the stalemate with developing countries Congress passed legislation regarding the 2006 federal budget, which proposed to cut spending on agricultural subsidies by $3 billion over a period of five years. Such agricultural subsidies for farmers in developed countries, like those in the E.U., have been what developing countries have been fighting all along.

While the 2003 Cancun Ministerial Meeting was a failure due to the negotiation collapse, the main Doha negotiations in Geneva kept going. However, due to the Cancun delay, the original deadline for the Doha round expired on January 1, 2005.

C. Recent Developments in the Doha Negotiation Process

1. Proposition by the United States Trade Representative

In July 2006, Susan Schwab, President George W. Bush’s newly-appointed U.S. Trade Representative, declared that the U.S. was

49. See Becker, supra note 47.
52. See CAP Leaflet: The Common Agricultural Policy—A Policy Evolving with the Times, EUROPA, available at http://ec.europa.eu/agriculture/publi/capleaflet/cap_en.htm (stating that the CAP was created to ensure that the E.U. had a sustainable agricultural sector and to ensure a food supply for Europeans) (last visited June 3, 2007).
53. See id.
55. See Becker, supra note 47.
57. See Ambassador Susan Schwab, United States Trade Representative, June 9, 2006, http://www.ustr.gov/Who_We_Are/Bios/Ambassador_Susan_C_Schwab.html (explaining that Schwab was nominated by President Bush on April 18, 2006 and confirmed by the U.S. Senate on June 8, 2006 as the U.S. Trade Representative).
finished cutting subsidies to its farmers, as Congress had done with the federal budget proposal in April 2005. Specifically, Schwab criticized the E.U. for its resistance to cutting domestic subsidies and tariffs. According to the Office of the Trade Representative, "[t]he United States has put forth the world’s most ambitious proposal for removing trade-distorting barriers to trade in agriculture." Through her remarks, Schwab made it clear that the U.S. wanted rich nations to cut their barriers to trade by approximately sixty-six percent; meanwhile, the E.U. was only willing to cut thirty-nine percent. Similarly, the G-20 group (including Brazil, India, and China) requested a fifty-four percent cut by rich nations, while they pushed for developing nations to only cut two-thirds of that amount with special loopholes designed to protect the livelihood of their farmers.

2. Proposition by the WTO Director-General

At the same time, the Director-General of the WTO, Pascal Lamy, proposed a “20/20/20” deal that was also encouraged by World Bank President Paul Wolfowitz. Lamy’s proposal required the U.S. to cut its subsidy levels below $20 billion per year, required the E.U. to accept the G20’s proposal regarding farm tariffs, and required emerging G-20 economies to cap their industrial tariffs at twenty percent. Unfortunately, the two leaders of the G-20 group, Brazil and India, did not agree on Lamy’s “20/20/20” proposal. India maintained that the Doha Round was intended to help poorer nations, meaning that developing nations should not be required to change any of their trade policies. India therefore rejected Lamy’s proposition.

58. See Under Attack, supra note 12.
59. See id.
60. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, U.S. LEADERSHIP ON HELPING DEVELOPING COUNTRIES REALIZE BENEFITS OF DOHA ROUND 1 (2005).
62. Id.
63. Id.
64. See id.
65. Id.
68. See id.
69. See id.
70. See id.
71. See id.
72. See Under Attack, supra note 12.
3. The Second Stalemate

Ultimately, a stalemate developed between WTO Member States over the competing proposals.73 Faced with the lack of progress by various negotiators,74 Director-General Lamy suspended the talks on July 28, 2006. Lamy further stated that he would not suggest any dates in the future for resumption of the negotiations as it was not possible at the time.76 Just as in Cancun in 2003, it became apparent that the talks had collapsed due to the international debate over agriculture. In suspending the talks, Lamy expressed hope that WTO Member States would have the opportunity for “[s]erious reflection by participants which was clearly necessary.”77

4. The U.S. Identifies a Possible Solution

In September 2006, the U.S. began to push for the talks to resume, with one caveat. The U.S. publicly identified China as a key player in the successful negotiation of the Doha Round.78 U.S. Treasury Secretary Henry Paulson79 personally visited China in order to encourage China’s revival of the Doha talks.80 Additionally, Director-General Lamy made a similar visit in September 2006 to urge the participation of Chinese leadership in reinstituting the talks.81

During his visit to China, Lamy noted that China played a unique role in the global trading system.82 China is the fastest-growing trading nation in the world83 and is the world’s third largest trading economy.84

74. See id.
75. See id.
77. General Council Summary, supra note 74.
79. See Dept. of the Treasury, Biography of Henry M. Paulson, Jr., Secretary of the Treasury, July 27, 2006, http://www.ustreas.gov/organization/bios/paulson-e.html (last visited June 3, 2007) (noting that Paulson was nominated by President Bush on June 19, 2006 and was confirmed by the U.S. Senate on June 28, 2006).
80. See Bodeen, supra note 79.
82. See generally id.
83. See id.
84. See id.
By 2050, China's economy is expected to be larger than the economy of the U.S.85 The WTO and the U.S. have both made attempts to bring China to the forefront in getting the Doha talks back on track.86 In doing so, the U.S. and the WTO highlighted the benefits China stands to gain with successful Doha negotiations.87 Most importantly, as the world's most populous nation, China will continually need to ensure an adequate food supply for its people.88 The Doha negotiations would ensure that China maintains this food supply at stable and affordable prices.89 At the same time, the Doha Round presents an opportunity for China to negotiate for special protections for a number of sensitive agricultural products.90 This would ensure that the Chinese trade balance in agriculture would not be shocked by a newly negotiated global trade regime.91

III. The 2007 Farm Bill: The First Step in Showing Commitment to the Successful Completion of the Doha Round

Currently, the passage of the 2007 Farm Bill and the anticipated further Doha Round negotiations are proceeding on relatively concurrent timetables.92 The 2007 Farm Bill would take effect beginning with the 2008 crop year.93 Many U.S. farmers are looking to the 2007 Farm Bill for significant change, with or without the Doha Round of negotiations as a guideline for Congress to follow.94 Closer examination of the expected proposals for the 2007 Farm Bill will predict how the Doha negotiations might be handled in the future.

86. See Lamy, supra note 82.
87. See id.
88. See id.
89. See id.
90. See id; see also U.N. Food & Agriculture Organization, Symposium on Agriculture, Trade and Food Security, Paper No. 4 27 (1999) (explaining that a special agricultural product is characterized as a food staple necessary to a nation's food supply).
91. See id.
92. See Thompson, supra note 10, at 15 (discussing that writing of the 2007 Farm Bill will occur in early 2007 and the most likely time for conclusion of the Doha Round is June 2007).
94. See AgDay Daily Recap - 09/05/06, Agweb, available at www.lexis.com, search for “AgDay Daily Recap-09/05/06 AgWeb.com September 5, 2006” (last visited June 3, 2007).
A. The Current Farm Bill and Political Influence by American Farmers

The most common argument for agricultural subsidies within the U.S. has been to support the family farm in order to subsidize its relatively low-income level.95 However, most of the "typical" small American family farms are not commercial enterprises capable of supporting a family.96 These farmers earn the median family income from non-agricultural sources, and actually lose money in the operation of their farms.97 At the same time, large agri-business corporations are not benefiting from subsidy programs.98 Agri-business accounts for less than ten percent of farm output in the United States.99 Furthermore, only certain crops ("program commodities") qualify to receive subsidy benefits.100 These crops include: corn, soybeans, wheat, cotton, rice, and dairy.101 In fact, only 150,000 farmers produce seventy-five percent of the nation's food and fiber produce.102 The lopsided system created by the 2002 Farm Bill allows seventy percent of government-supported payments to go to only ten percent of producers.103 The effect of this, according to Senator Chuck Hagel of Nebraska is, "[t]hey keep commodity prices low, drive up land prices, and allow large land owners to buy up small agricultural producers with taxpayer dollars."104 Even though it appears that the small farming industry may be on the decline, farmers have gained political clout with Congress in recent years.105 This was accomplished by building solidarity among different farmers from a variety of farming backgrounds.106

Politically, rural America supported the reelection of President George W. Bush in 2004.107 Agricultural contributions to Political

95. See THOMPSON, supra note 10, at 7.
96. See id. at 8.
97. See id.
98. See id.
99. See id.
101. See id.
102. See Ron Smith, Former Congressman: Divisive politics stalling progress, SW. FARM PRESS, Sept. 21, 2006, at 1.
103. See Farm Bill Field Hearing Opening Statement: Senator Chuck Hagel, STATES NEWS SERVICE, Aug. 16, 2006 [hereinafter Field Hearing].
104. Id.
105. See THOMPSON, supra note 10, at 8.
106. See id. at 8-9 (explaining, for example, dairy and tobacco farmers formed a coalition and secured benefits for both that each could not have received on their own).
107. See id. at 9.
Action Committees during the 2004 election equaled $12.3 million. Agricultural interest groups were cited as being among the best in managing their campaign contributions giving them influence in excess of their numbers.

B. Political Influence of the American Farmer and the Need for International Cooperation

Various policy groups within Washington are encouraging Congress to bear in mind international trade concerns when drafting the 2007 Farm Bill. The President of the American Agricultural Law Association stated that his two main recommendations for the 2007 Farm Bill were international in scope. He outlined his two major goals as, “1) to expand trade; and 2) to ensure that any changes in farm legislation must be accompanied by a more level playing field with other countries.”

Many farmers and their lobbying associations recognize the importance of the Doha Round of WTO negotiations for American farmers. Most importantly, American farmers want to be included in the governmental process of negotiating a fair trade agreement. International trade plays a central role in the American agricultural industry. The future economic viability of produce from American farms lies in access to international markets. At the same time, American farmers recognize that the U.S. trade negotiators present at the Doha talks should not allow the dismantling of American farm support programs. If a 2007 Farm Bill agreement is not reached within Congress, many farmers fear an extension of the 2002 Farm Bill.

108. See id. at 10.
109. See id.
110. See Bridgforth, supra note 94, at 3.
111. Id.
112. See Smith, supra note 103 (“[F]ailure of the DOHA Round of WTO negotiations is bad for agriculture.”).
113. See id.
114. See Field Hearing, supra note 104.
115. See Testimony Regarding the Agricultural Negotiations of the World Trade Organization’s “Doha Development Round”: Before the H. Agriculture Comm., 109th Cong. (2006) (statements of Mike Johanns, U.S. Secretary of Agriculture and Rob Portman, U.S. Trade Representative); Federal Farm Policy: Hearing Before the Subcomm. on Livestock and Horticulture of the H. Agriculture Comm., 109th Cong. (2006) (statement of Billy Thiel, Corn Farmer, Malta Bend, MO) (“As important as additional market access is, we must make sure that the farm safety net remains in place for American farmers.”).
116. See Smith, supra note 103.
C. Judicial Influence on the 2007 Farm Bill: United States-Upland Cotton ("The Cotton Case")

One of the major ways the Doha negotiations may affect the 2007 Farm Bill is through Brazil’s action against the U.S. cotton industry through the WTO Dispute Settlement Body. In February 2003, Brazil filed allegations that the U.S. cotton program violated the Uruguay Round Agreement on Agriculture (URAA). The wealthy Brazilian Agriculture Minister, Roberto Rodrigues, who was deeply tied to large agribusiness, led Brazil’s fight against the U.S.

1. Brazil’s Allegations

Specifically, Brazil alleged that government subsidies to U.S. cotton producers increased domestic cotton production and these additional exports caused the global prices on cotton to fall. Brazil had to meet a standard of showing “serious prejudice” against Brazilian cotton in the global marketplace. The concept of “serious prejudice” is defined as “in any case where . . . the effect of the subsidy . . . is significant price suppression, price depression or lost sales in the same market.” Brazil asserted that U.S. actions therefore reduced the earning of Brazilian cotton farmers who earn their entire income from the marketplace in cotton. Brazil estimated that it lost approximately $480 million in cotton revenue due to U.S. subsidy policies. Brazil sought sanctions of $1.04 billion per year against U.S. goods for these alleged violations. Other countries, such as Australia, supported Brazil’s allegations that the

117. See THOMPSON, supra note 10, at 12.
118. See Appellate Body Report, U.S.-Upland Cotton, ¶ 1, WT/DS267/AB/R (Mar. 3, 2005) [hereinafter Appellate Body Report]; see also THOMPSON, supra note 10 (explaining that the U.S. was not only a signatory to the URAA, but also a principal author).
120. See Appellate Body Report, supra note 119, at ¶ 83.
124. See THOMPSON, supra note 10, at 12.
126. See Sanctions, supra note 124.
U.S. cotton subsidies distorted global cotton prices. In its support of Brazil, Australia alleged that the average Australian cotton farmer lost $42,000 per year as a result of the U.S. subsidies.

2. Rebuttal Arguments by the United States

To counter Brazil's arguments, the U.S. argued that its payments to cotton farmers did not distort trade. The U.S. claimed the payments were not tied to current production; instead, farmers were paid according to the acreage he or she planted and according to past production levels. Therefore, the U.S. argued that the subsidies did not inflate supply or depress prices in the world marketplace.

3. The WTO Rulings

The WTO Panel ruled against the U.S. and mandated that the cotton subsidy payments be stopped because the payments constituted export subsidies that offended the URAA. On appeal, the Appellate Body rendered the first ever WTO decision that found a Member State's subsidy program to be prohibited. In its final decision, the Appellate Body upheld most of the Panel's initial findings. The Appellate Body held that both types of subsidies used by the U.S., user-marketing payments ("Step 2 payments") and export credit guarantees, were prohibited under the guidelines of WTO membership in the URAA.

4. Response to the WTO Appellate Body Ruling

The U.S. Department of Agriculture did what it could to stop the

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128. See id.
130. See id.
131. See id.
132. See id.
133. See Appellate Body Report, supra note 119 at ¶ 288 ("The measures that are the subject of this request are prohibited and actionable subsidies provided to US producers, users and/or exporters of upland cotton, as well as legislation, regulations, statutory instruments and amendments thereto providing such subsidies (including export credits), grants, and any other assistance to the US producers, users and exporters of upland cotton.").
134. See id. at ¶ 291.
135. See id. at ¶ 552, 584 ("Accordingly, we uphold the Panel's findings, in paragraphs 7.1088, 7.1097-7.1098 and 8.1(f) of the Panel Report, that Step 2 payments to domestic users of United States upland cotton, under Section 1207(a) of the FSRI Act of 2002, are subsidies contingent on the use of domestic over imported goods that are inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement").
136. See id.
subsidy program, but action by Congress was necessary to effectively end it. The U.S. position is to table the resolution of this issue until a final agreement emerges from the Doha Round. Many critics of the Brazilian tactics have questioned whether Brazil brought this case simply as a means to disrupt the Doha negotiations on agriculture. The strategy of pursuing litigation, rather than reaching solutions through negotiation, might weaken multilateral trade. Brazil, on the other hand, would rather see the U.S. comply with the ruling of the Appellate Body before the end of the Doha talks. To date, Congress has not acted on the Appellate Body ruling by eliminating the offending subsidies, but the Appellate Body ruling mandates could be included in the 2007 Farm Bill.

5. The Effect on the Success of the Doha Round

If the issues in the Cotton Case are not resolved between the U.S. and Brazil, they could impede the success of a final Doha Round agreement. Brazil has emerged as a leader among developing nations and actively participated in the contentious agriculture negotiations during the Doha Round. Brazil instigated the 2003 walkout in Cancun over the same agricultural issues. Brazil may persuade other developing nations to block any further Doha negotiations until the U.S. implements the WTO Appellate Body ruling effectively.

IV. China’s Role in WTO Negotiations: The Second Step to Achieving Success in the Doha Round

As a rapidly developing trade nation, China has much to gain from expanded international trade and much to lose if international trade slows. China joined the WTO on December 11, 2001. Since that

137. See THOMPSON, supra note 10, at 12.
140. See id.
141. See Landmark Ruling, supra note 139.
142. See THOMPSON, supra note 10, at 12.
143. See Becky L. Jacobs, Brazil’s Agricultural Trade War: Success and Failure on the Southern Route to Antarctica, 36 U. MIAMI INTER-AM L. REV. 167, 173-74 (2005) (explaining that since the Cancun walkout, Brazil has taken an assertive approach to agriculture reform and has refused to join any U.S. proposal).
144. See id.
145. See id.
time, China has become the U.S.'s fourth largest export market and the world's third largest trading nation. Furthermore, China's gross domestic product has grown 500 percent since joining the WTO. Approximately 377 million Chinese have been lifted above the poverty line because of enhanced income from international trade. The U.S. Trade Representative visited China in August of 2006 and met with her counterpart, the Minister of Commerce. Her remarks encouraged China to take an active role in the Doha discussions. She outlined the U.S.'s primary fear that if the Doha talks failed, countries will resort to litigation before the WTO Dispute Settlement Body rather than negotiate trade practices. The U.S. never prefers litigation because it is time consuming and resource intensive. If litigation results, due to failed talks, China stands to lose significantly. It is likely that many countries will bring complaints against China before the Dispute Settlement Body, which would be a very costly process for the developing country.

A. Chinese Compliance with WTO Membership Guidelines

China's WTO membership was contingent on its commitment to sweeping trade reforms, both internally and externally. It developed three general commitments: 1) bring Chinese trade policies in line with WTO guidelines; 2) liberalize the Chinese market for goods and services; and 3) introduce effective protection for intellectual property rights.

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147. See e.g., United States Trade Representative, 2006 Report to Congress on China's WTO Compliance 3 (2006) [hereinafter 2006 Report to Congress].
150. Id.
151. Id.
152. See Susan Schwab, United States Trade Representative, Remarks at AmCham China - U.S. China Business Council Event (Aug. 29, 2006).
153. See id.
154. See id.
155. See id.
156. See id.
158. See 2006 Report to Congress, supra note 148.
159. See The Dragon's Docile Role in WTO, Forbes, Mar. 9, 2006 [hereinafter Dragon's Docile Role].
Five years have passed since China's accession to the WTO and the transitional period has ended in the eyes of the U.S.  China successfully implemented, repealed or revised thousands of laws, regulations and policies after joining the WTO in order to reform its economy into WTO free-trade compliance.  China's greatest WTO compliance success rate has come from the service sector of its economy.  However, some of the country's industrial policies, agricultural policies and intellectual property policies continue to be a source of contention among other WTO Member States. The Chinese policies in these areas are still distorting trade and, specifically, the U.S. complained of excessive government involvement in the marketplace.

B. Current Chinese Attitudes Towards the Doha Talks

China has publicly stated its support for re-starting the Doha talks and their speedy conclusion.  The Chinese Commerce Minister, Bo Xilai, stated that he was committed, along with the Indian Commerce Minister, to getting the Doha Round back on track.  The Ministers said: "The outcome must expand trade opportunities for all; but it must also achieve developmental objectives and safeguard crucial developing country interests such as livelihood security which are the avowed objectives of the Round.”

C. China's Passive Role in Influential International Trade Groupings

1. The G-20 and the G-33

China has become involved in the G-20 and G-33 negotiating blocs in recent years.  The G-20 is a forum where key developing industrial

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160. See Zwaniecki, supra note 149.
161. Id.
162. See 2006 REPORT TO CONGRESS, supra note 148.
163. See Zwaniecki, supra note 149.
164. See 2006 REPORT TO CONGRESS, supra note 148, at 3 & 61-67.
165. See Zwaniecki, supra note 149.
166. See India, China for “successful conclusion” of WTO Doha Round, ANI, Nov. 23, 2006.
167. See id.
168. Id.
169. See Krause, supra note 150; see also Mario Jales, G-33 Agricultural Tariff Structures and Import Surges, 8 ICTSD 21 (2005), available at http://www.agtradepolicy.org/output/resource/Jales_BRIDGES9-8.pdf (explaining that
countries can express and develop common financial policies. The G-33 is a group of developing countries seeking protection for subsistence farmers in WTO negotiations. The G-33 is composed of forty-two very diverse nations, ranging from the world's largest country, China, to the most destitute, Haiti, to the developing world's most advanced nation, South Korea. Within both of those groups, China plays a very passive role, and smaller nations with policies impeding Chinese development play the leading roles. China, as the world's most populous country, could and should pursue more aggressive policies to further its own interests within these groups. Namely, the Chinese representation should attempt to gain the trust of its trading partners and should attempt to increase trade with other developing countries that have potentially profitable future markets.

2. The G-6

China is not a member of the influential G-6 group within the WTO structure. The G-6 is made up of the six most powerful WTO nations and their periodic informal meetings usually signify progress within the WTO negotiating scheme. Being a member of the group would allow China to assume a role as a more powerful and influential WTO negotiator.

the G-33 is composed of 42 developing countries from Africa, Asia, Latin America and the Caribbean and these nations support Special Products and Special Safeguard Mechanisms) (last visited June 3, 2007).

170. See Krause, supra note 150.
171. See id.
172. The G-33 includes: Antigua and Barbuda, Barbados, Belize, Benin, Botswana, China, Cote d'Ivoire, Congo, Cuba, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Korea, Mauritius, Mongolia, Montserrat, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, the Philippines, Peru, Saint Kitts, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia and Zimbabwe.
173. See Jales, supra note 170.
174. See Krause, supra note 150.
175. See id.
176. See id.
177. See Dragon's Docile Role, supra note 160; see also Doha Round Suspended Indefinitely After G-6 Talks Collapse, 10 ICTSD 27, July 26, 2006, available at http://www.ictsd.org/weekly/06-07-26/story1.htm (last visited June 3, 2007) (explaining that the G-6 is comprised of the E.U., Brazil, Australia, U.S., India and Japan and are described as the key six nations that have to bridge their differences for the Doha Round to be successful).
178. See Dragon's Docile Role, supra note 160.
179. See id.
3. Chinese Regional Leadership

Promisingly, China has assumed a leadership role in free-trade agreements in the Asian region. China, Japan and South Korea have all pursued aggressive bilateral trade agreements with other smaller Asian countries. The effect of these individual agreements will be greater trade distortion in the region because each nation is pursuing its own individual interests in each agreement. The only way to avoid such distortion is for the Asian region to establish a multi-lateral regional trade agreement, or for Asia to accept the broader WTO multilateral trading system.

D. Congress's Reaction to China's Passive Role

If the Doha Round talks fail, China could resort to its protectionist policies of the past. The U.S. Trade Representative has cited various bills before Congress that propose a "get tough" approach to dealing with China and its entry into the global trading regime. The U.S. Trade Representative believes that if China acts responsibly and takes an active role in encouraging Doha talks, the concerns expressed by Congress will be allayed.

1. House Resolution 3283: One Reaction to China's Trade Policies

House Resolution 3283, entitled the "United States Trade Rights Enforcement Act" and authored by Representative Phil English of Pennsylvania, is one of the "get-tough" bills directed toward China. This bill calls into question the policies of non-market economy nations, such as China. Through this bill, the House of Representatives has expressed a belief that non-market economies are hurting American
producers because these economic systems subsidize the products they export to the U.S. The Resolution also encourages the U.S. Trade Representative to aggressively negotiate with non-market economies about their trade practices and, if necessary, pursue dispute settlement proceedings against these unfair trade practices in every available forum.

The bill specifically refers to China because of the exploding trade relationship the U.S. has with it, and, the significant impact this trade relationship has on the U.S.'s economy. It encourages the U.S. Trade Representative to pay particular attention and focus resources on the U.S.-China trade relationship. The bill requires the U.S. Trade Representative to request a detailed accounting of all of the subsidies China pays to its citizens in the agriculture market to ensure complete WTO compliance.

Also, the bill calls into question China's refusal to join the Agreement on Government Procurement (GPA) within the WTO. The GPA is comprised of the U.S., the E.U. Member States, and others, such as Hong Kong, Israel, Japan and South Korea. When China joined the WTO in 2001, it committed to commence negotiations to join the GPA in a timely manner. As of the creation of this bill, China had yet to begin the negotiation process. The U.S. is concerned about China's delay in beginning this process. This concern was exacerbated by Chinese behavior after it joined the WTO by passing a law for the purposes of government procurement of goods and services, in which China showed a strong preference for domestic products and services. This preference for domestic products and services most strongly affects the computer software market within the U.S. because American manufacturers are at a strong disadvantage marketing their products to the large buying power of the Chinese government. This is extremely troublesome because U.S. software manufacturers have made substantial commitments to developing the software industry in China and now

which most major economic decisions are imposed by government and by central planning rather than by free use of markets.

192. See H.R. 3283 § 2(1).
193. See id. at § 2(10).
194. See id. at § 2(11).
195. See id.
196. See id. at § 5(e).
197. See H.R. 3283 § 9(a)(2).
198. See id. at § 9(a)(6).
199. See id. at § 9(a)(7).
200. See id.
201. See id. at § 9(a)(9).
202. See H.R. 3283 § 9(a)(13).
cannot compete in this same market. The U.S. fears that this policy on computer software, if it is allowed to continue unchallenged within the WTO, will result in broader policies within China relating to all goods and services across the board, including agriculture. This, in turn, could lead to other developing countries following China's lead, and enacting similar policies, which could completely distort free trade on a global scale. The bill proposes to make the U.S. the lead player in ensuring China's honest and eager participation in the WTO. If this is not done, China will continue its unfair protectionist policies and will continue to go unchecked by the WTO.

2. Senate Bill 2317: Another Attempt to Influence China's Trade Policies

Senate bill 2317 was an attempt by three senators (Max Baucus of Montana, Debbie Stabenow of Michigan, and Orrin Hatch of Utah) to attack the trade issues with China with their "Trade Competitiveness Act of 2006." The bill requires the U.S. Trade Representative to encourage foreign nations' policies that in the future will increase economic growth within the U.S. The U.S. Trade Representative should identify those foreign nations' policies as "foreign country trade priorities." Although the House Resolution aims to address Chinese actions directly, the Senate bill focuses on Asia's use of currency manipulation under the International Monetary Fund (IMF) to gain a trade advantage. The policies of Asian central banks are keeping Asian currencies from competing against the dollar in an open market. Because the U.S. is the largest shareholder in the IMF (and the most powerful within the WTO), the U.S. has the most clout in persuading the IMF to disallow this currency distortion.

203. See id. at § 9(a)(14).
204. See id. at § 9(a)(23).
205. See id. at § 9(a)(24).
206. See id. at § 9(b)(1-5).
211. See id. at § 311(a)(2).
212. Id.
213. Compare id. at § 5 (focusing on Asian currency manipulation), with H.R. 3283 § 2(11) (addressing Chinese actions specifically).
214. See id. at § 5(6).
215. See S. 2317 § 5(9).
3. Congressional Fears Regarding the U.S.-China Relationship: Are they Well-Founded?

Congress is concerned about the enormous growth the Chinese economy faces in the near future, and the corresponding threat to the powerful status of the U.S. Much of this is evidenced by the current U.S. trade deficit with China, totaling $201.6 billion in 2005. The deficit grew by $40 billion between 2004 and 2005. The WTO will play a unique role in the negotiation of a relationship between the U.S. and China in the future. A forum provision for the U.S. and China to negotiate up-and-coming trade issues reduces chances of a super-power rivalry down the road. Both nations have much to gain from successful international trade with each other, and with others around the world.

With China growing at a rapid pace, it is understandable that Congress would be concerned about China threatening the U.S.’s strong ties to other countries in the Asian region. The U.S. has built strong trade relationships with Japan, South Korea and Taiwan, all neighbors of China. These relationships could be damaged or undermined by growing Chinese power in the region. The only solution to this possible regional trade competition is to encourage a broad, multilateral solution under the framework of the WTO through the completion of the Doha Round.

V. Election 2006: Changes in Washington—No Change for the Doha Round

New Democratic majorities in the House and Senate in January 2007 brings questions about what the future of Doha negotiations might hold. U.S. Trade Representative Susan Schwab spoke to these concerns following the election. At a conference organized by the U.S. Chamber of Commerce, Schwab said that the Administration would not

217. Id.
218. See Posner & Yoo, supra note 147.
219. See id.
220. See id.
221. See id. at 14.
222. See id.
be changing its Doha policy now that leadership in Congress has changed.\textsuperscript{225} The only change that will result is more dialogue between trade representatives and Congress, as the Democratic leadership is more concerned about strong labor and environmental standards, both in the U.S. and abroad.\textsuperscript{226} Schwab also cited resuming Doha talks as the top priority trade issue for the Bush Administration.\textsuperscript{227} It is important for the U.S. to speak with one voice when confronting Doha negotiations and when making commitments to other WTO Member States.\textsuperscript{228} As evidenced in the past, Congress and the Administration have differed in the commitments they make to fellow WTO members. This has only lead to conflict and additional stalemates in the talks. The elections have not weakened the U.S.’s commitment to a successful conclusion to the Doha talks because both political parties are encouraging such an outcome.\textsuperscript{229}

VI. Conclusion: The Solution to Successfully Negotiating a Doha Agreement

A. Analysis of Two Possible Paths for Showing Commitment to Successful Doha Negotiations

The International Food and Agricultural Trade Policy Council predicts that the 2007 Farm Bill will look much like the 2002 Farm Bill, which signals danger for the resumption of Doha negotiations.\textsuperscript{230} If the U.S. passes a Farm Bill similar to the one that caused international outrage in 2002, it will be handing China a disincentive to enthusiastically pursue resuming the Doha talks. China needs to see the U.S. take a serious step forward in committing to the Doha Round before it can be expected to take its own leadership role in pushing the talks forward.

Another alternative for the U.S. would be for Congress to wait on the passage of a 2007 Farm Bill until after negotiations conclude. If Congress does this, and subsequently incorporates the final Doha Round agreement on agriculture into the 2007 Farm Bill, it will show commitment to the principles negotiated in Doha. Under this solution, China can then be encouraged to take a more active role in encouraging other developing countries to adhere to Doha’s mandates. Other

\textsuperscript{225} See id.
\textsuperscript{226} See id.
\textsuperscript{227} See id.
\textsuperscript{228} See id.
\textsuperscript{229} See Zwaniecki, supra note 225.
\textsuperscript{230} See THOMPSON, supra note 10, at 15.
countries will then see that the negotiations they participated in will have an impact on the internal agricultural policies of the U.S.

American farmers are less than enthusiastic about the resolution of countries' differences in the Doha negotiations. They should be concerned about the outcome of the final version of the 2007 Farm Bill and the resolution of the Doha Round. If the new farm bill maintains the status quo regarding subsidies to American farmers, this will be seen as a minimalist effort in getting the Doha Round back on track. This minimalist attitude will hurt the U.S. in the long term. Currently, seventy-three percent of all U.S. exports are sent to countries other than Canada and E.U. nations, the main allies of the U.S. within the Doha negotiation framework. Developing countries in Asia and Latin America are buying the majority of U.S. exports. In 2000, Asian states purchased forty-three percent of all U.S. farm exports and Latin American states purchased twenty-two percent. These countries are projected to be the future growth market for American farmers because they are projected to add billions of people to the world’s population in the first half of the 21st century.

However, there is one important caveat in dealing with these developing nations. These nations must have the purchasing power to continue to buy American agricultural products. Increased levels of international trade are the most effective way to keep this purchasing power available. The Doha Round and its successful completion will ensure that international trade is encouraged, and will ensure that American farmers continue to have places to sell their products around the world.

Furthermore, China needs to take a more active role within the Doha negotiating framework. China needs to reflect its size and power in the process of getting the Doha negotiations back on track. The U.S. has made attempts to enhance dialogue with China through bilateral trade discussions, in an attempt to bring China back into the global trading regime. For instance, in April 2006, the U.S. and China successfully negotiated the re-opening of Chinese markets to American beef.
China also needs to take its commensurate role in the G-20 and G-33 trading blocks because, currently, less-powerful nations with interests adverse to those of China are driving the positions of these two trading blocks. 242

As has been suggested, perhaps the single greatest thing China can do to encourage the resumption of the Doha Round and promote increased international trade is to lead by strong example. 243 China also needs to assure its fellow developing countries that its markets will remain open to their products. 244 The maintenance of open South-South trade 245 will only allow China's economy to grow in the future. 246

For the same reasons the U.S. needs to encourage trade with developing nations, these nations are the markets for future growth. 247 The successful completion of the Doha Round is the largest insurance policy for sustaining growth in international trade for the future. Both the U.S., through the 2007 Farm Bill, and China, through more active participation in resuming the talks, should advocate for a speedy and final Doha agreement between all WTO Member States to ensure sustainable levels of international trade in the future.

242. See id.
243. See id.
244. See id.
246. See id.
247. See Schwab, supra note 153.