

# The Potential Clash of Climate Change Policy and International Trade Law

Matthew Nicely\* and Valerie Ellis\*\*

As various initiatives are proposed for dealing with the global warming crisis, international trade considerations inevitably come to mind. Efforts to protect the environment are often combined with measures to protect the competitive posture of domestic industries. While this is an understandable goal of policy makers, and could play an important role in convincing other countries to establish their own environmentally friendly policies, policy makers should give care to ensure the United States does not run afoul of international obligations and place its industries at risk of retaliation by trading partners.

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Two initiatives—one already in place, one being considered—trigger potential international trade disputes. Policies aimed at promoting production and use of alternative fuels already raise concerns that we may discriminate against imports—concerns which will come under closer scrutiny as renewable fuel consumption skyrockets. Meanwhile, the U.S. Congress is currently considering climate change legislation that would regulate U.S. carbon emissions while also subjecting imports of energy-intensive products to additional costs if they come from countries without comparable emissions standards. We briefly address each of these initiatives in this article.

## I. INTERNATIONAL TRADE POLICY AND RENEWABLE FUELS

U.S. energy independence has become an issue of primary importance for U.S. policy makers. In the most recent State of the Union Address, President Bush announced plans to increase renewable fuel usage by twenty percent over the next ten years.<sup>1</sup>

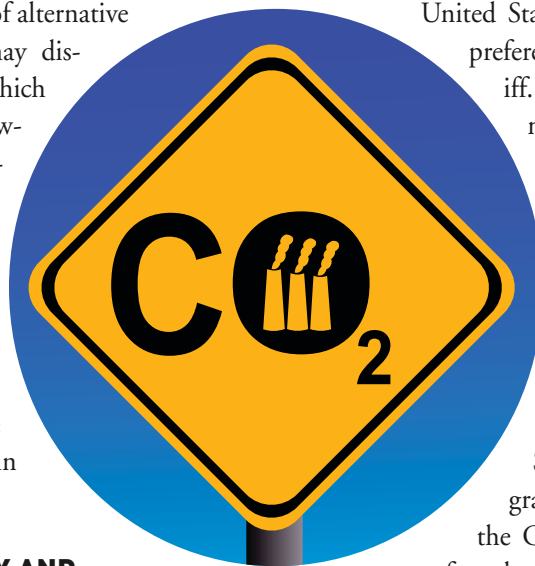
Some Congressional leaders have pushed for an even greater increase in renewable fuel usage. Ironically, U.S. trade policy for imported ethanol arguably discourages renewable fuel consumption. The United States maintains a high tariff barrier for imported ethanol, combined with a subsidy program to encourage domestic consumption. In this way, U.S. tax and trade policies for ethanol primarily serve to protect the U.S. ethanol industry from foreign competition. While the United States has not been subject to a direct WTO challenge on any one aspect of its ethanol policy, the combination of a U.S. subsidy program and tariff barrier is arguably inconsistent with WTO obligations in addition to being at odds with the U.S. commitment to encourage use of renewable fuels.

### The Ethanol Tariff

The United States maintains a high, \$0.54 per gallon tariff on ethanol imported from certain trading partners.<sup>2</sup> Although the tariff rate is technically considered a most-favored-nation (MFN) rate, Brazil, the world's largest and most efficient ethanol producer, tends to suffer disproportionately from the effects of this tariff because it is one of the few suppliers of ethanol to the

United States for which there are not special trade preferences carved out exempting it from the tariff. Several regional and bilateral trade agreements afford duty-free treatment to ethanol imports, including imports from countries subject to the Andean Trade Preference Act (ATPA), the U.S.-Peru Free Trade Agreement, the U.S.-Israel Free Trade Agreement, and the North American Free Trade Agreement (NAFTA).

In addition to these bilateral and regional trade agreements, the United States has a special duty-free ethanol program for countries eligible for benefits under the Caribbean Basin Initiative (CBI)—a series of trade programs intended to facilitate the economic development and export diversification of the Caribbean Basin economies.<sup>3</sup> Similar ethanol provisions are contained in the Central America Free Trade Agreement (CAFTA).<sup>4</sup> Ethanol from CBI and CAFTA countries may be imported into the United States on a duty free basis if it is produced with local feed-



stock; however, even if the ethanol is not entirely produced in the beneficiary country, it may nevertheless be granted duty-free treatment provided certain conditions are met. These provisions are particularly important for CBI countries, many of which do not have an indigenous source of traditional ethanol feedstocks. Pursuant to these special CBI and CAFTA rules, foreign-sourced ethanol (e.g., from Brazil or more recently, China) that is imported into a beneficiary country and dehydrated to make it fuel grade, will be considered product of that country and will receive duty-free treatment up to a certain volume limit.

### National Treatment

The United States is a principal architect of the current international trade regime that is based, in large part, on the General Agreement on Trade and Tariff (GATT), and overseen by the World Trade Organization (WTO). Central to WTO/GATT mandates is the concept of “national treatment.”<sup>5</sup> In simple terms, this means that foreign imports must always be treated as well or better than their domestic counterparts.

### Most Favored Nation Treatment

Complementary to the WTO/GATT mandates of “national treatment” is the concept of “most favored nation” (MFN) treatment<sup>6</sup> meaning that all foreign imports from member countries shall be treated equally with no preferences for specific countries. When dealing with the imposition of tariffs, MFN treatment is satisfied when like foreign products are “similarly taxed.”<sup>7</sup>

### Defense of Regional Agreements under GATT Article XXIV

Article XXIV of GATT permits countries to engage in regional trade agreements that extend preferences, notwithstanding the general requirement that WTO members extend MFN treatment to all members. Free trade agreements (FTAs) are exempt from the MFN clause, provided that the arrangement does not increase existing levels of trade restrictions affecting nonmember countries.<sup>8</sup> If existing trade barriers are raised to outsiders, compensation may be required. The arrangement must lead to significant liberalization, and in particular, it must cover “substantially all” trade between participating countries.<sup>9</sup>

The preferential treatment afforded to ethanol in various U.S. FTAs highlights key concerns currently in debate under Article XXIV. In particular, there is a question whether the special and agreement-specific origin rules typical of ethanol provisions in FTAs (e.g., treating Brazilian ethanol as CAFTA

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ethanol provided it has been dehydrated in a CAFTA country) allow the United States to create a hierarchy, thereby controlling the degrees of preference afforded to imports from competing regions. Critics argue that this kind of country-specific system of preferences violates the requirement regional trade agreements may not increase the restrictions on trade with non-members. FTAs continue to proliferate, Pascal Lamy, the current WTO Director-General, has expressed skepticism about the growth of regional FTAs stating “[P]roliferation [of regional FTAs] is breeding concern—concern about incoherence, confusion, exponential increase of costs for businesses, unpredictability and even unfairness in trade relations.”<sup>10</sup>

### Defense of the Ethanol Tariff

Although the United States continues to maintain a high tariff rate on imported ethanol from non-FTA-beneficiary countries, the best defense available to the United States for maintaining this tariff is that it was part of the original bound tariff rate already accepted by WTO members and considered to afford MFN status to imports. While the United States is prohibited from raising the ethanol tariff above the bound rate, it is not required to lower it. There is an argument that this rate was expected to phase out when it was included as part of the



bound tariff during the 1994 Uruguay Round, but there is no expiration expressly incorporated into the schedule. Therefore, on a stand-alone basis, it is difficult to assert that the tariff itself violates the GATT/WTO MFN principle. However, as discussed below, when viewed in tandem with the U.S. ethanol subsidy program, the combined tariff-subsidy program may violate the principle of national treatment.

### U.S. Ethanol Subsidies

In addition to U.S. tariff barriers and preferences for foreign ethanol depending on the country of origin, the United States maintains—and has plans to expand—various tax incentives to encourage domestic consumption of ethanol fuel. The most significant U.S. ethanol subsidy, created in 1978,<sup>11</sup> comes in the form of a tax exemption to ethanol users (i.e., fuel blend-

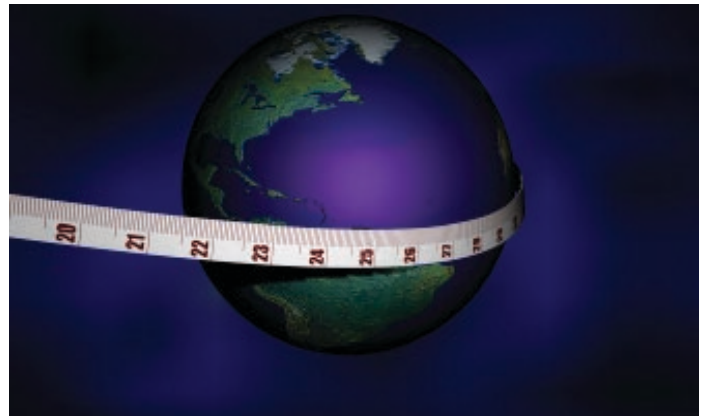
ers) in the United States. The U.S. government subsidizes the use of ethanol for fuel at a rate of \$0.52 per gallon.<sup>12</sup> While this subsidy is technically available to all fuel blenders, regardless of the origin of the ethanol used, the benefit of the subsidy is completely eliminated by the \$0.54 tariff imposed on U.S. importers who rely on foreign-sourced ethanol from countries not having special trade agreements with the United States. The similarity in the tariff rate and the subsidy rate is no coincidence. As history shows<sup>13</sup>—both at the time of enactment as well as the side-by-side extension of the subsidy with the tariff each time they are set to expire—the purpose of the so-called MFN import tariff is to eliminate the benefit of the ethanol subsidy for foreign-produced ethanol.

Whether or not opponents can challenge this subsidy program or any newly proposed programs is complicated in part by the fact that the U.S. gives the most significant subsidy to ethanol consumers (i.e., fuel blenders) rather than ethanol producers themselves. Thus, while a clear financial contribution is made to the ethanol industry, the benefit to the ethanol industry is less direct. Under the rules of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), a subsidy must provide both a financial contribution and a benefit before it is actionable.<sup>14</sup> Moreover, it is difficult to argue that the subsidy itself violates national treatment provisions, because use of Brazilian ethanol is also eligible for the tax break.

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Although there are challenges to raising a WTO claim against either the U.S. ethanol tariff or the U.S. ethanol subsidy program on a stand-alone basis, U.S. policy remains vulnerable to challenge when the two policies are viewed together. It is not difficult to see that the so-called MFN tariff rate operates as an offset to the U.S. subsidy program, effectively discriminating against imports, and in particular, against imports from non-FTA countries. The *effect* of the tariff-subsidy offset program is to place U.S. production on better footing in the marketplace than production from WTO member states, a clear violation of the national treatment provisions of the GATT.

Moreover, parties displeased with the tariff may also claim that the elimination of the tariff-subsidy offset for imports from FTA member states violates the principle of MFN treatment



for all imports. Finally, even if the United States could survive national treatment and MFN challenges to the U.S. tariff-subsidy offset program for ethanol, Article XXIII of the GATT, which allows claims of nullification or impairment of WTO benefits, provides that WTO member states may challenge each other's policies if they believe the objectives of the agreement are being impaired, "as the result of...the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement."<sup>15</sup> The sweeping language of Article XXIII appears to be intended to prevent members from attempting the very types of programs embodied in U.S. ethanol policy—programs that may be technically compliant with the GATT, but discriminatory in effect.

## II. CLIMATE CHANGE LEGISLATION AND INTERNATIONAL TRADE

The U.S. Congress is currently considering climate change legislation that is likely to establish a cap-and-trade regime. This regime would require domestic companies to cap their carbon emissions, and permits companies to exceed that cap only if they purchase a sufficient volume of carbon credits to cover the excess.<sup>16</sup> The greater costs associated with such a program raises concern for industries that compete with imports from countries that do not have or do not plan to adopt similarly stringent carbon emissions regulations. The WTO will no doubt scrutinize such measures, even though they are perfectly legitimate as a means to maintain U.S. competitiveness and encourage the world's worst polluters to adopt emissions standards.

Congress is considering two general methods to help maintain U.S. competitiveness. One of the two general approaches is a tax on imports from countries with insufficient carbon emissions regulations, referred to as a border tax adjustment (BTA). The amount of the tax is linked to the greenhouse gas (GHG) emissions released during the imported product's manufacture.<sup>17</sup> A BTA is intended to enable domestic products, subject to a U.S. cap-and-trade regime, to compete on equal footing with imports produced in the absence of analogous regulation. The second approach requires imports from countries lacking sufficient GHG controls to tender emission allowances or credits

equivalent in volume to those required by U.S. companies producing similar products under any new cap-and-trade law. This latter approach is reflected in the Low Carbon Economy Act of 2007 (S. 1766), sponsored by Senators Jeff Bingaman and Arlen Specter.<sup>18</sup> For example, under S. 1766 the President has the power, beginning in 2019, to require U.S. trading partners who have not adopted “comparable” climate change regulation to submit a declaration that each good imported into the United States is accompanied by a sufficient number of emission “allowances” to compensate for emissions attributable to production of the imported good.<sup>19</sup>

So far, the BTA idea has not gained much traction, in part because the chances for violating WTO obligations appear significant. The more interesting question is whether requiring the purchase of allowances might also risk possible WTO violation.

### **Allowance Purchase Requirements and National Treatment**

The most obvious concern with the treatment of imports in the legislative proposals is that they might violate the GATT principle of national treatment, under which foreign imports must be treated as well or better than their domestic counterparts. When dealing with the imposition of border measures, national treatment is satisfied when like foreign and domestic products are “similarly taxed.” Thus, to achieve WTO/GATT consistency, any emissions-based border measure must equate the cost of domestic cap-and-trade compliance with the charge levied on foreign goods.

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To satisfy the national treatment requirement, an allowance purchase requirement like the one in the Bingaman/Specter Bill must consider the number of emission allowances required for a particular good and the price of those allowances, and must also ensure the resulting charge is equivalent to domestic requirements. It is not entirely clear whether these considerations are given adequate attention in the Bill.

Under S. 1766, the number of allowances required for submission by domestic manufacturers is calculated on a company-by-company basis.<sup>20</sup> However, foreign importers must submit allowances on a per-product basis as determined by a formula tied to the foreign country’s overall emissions and the product category.<sup>21</sup> Meanwhile, S. 1766 only imposes a duty to submit allowances on energy intensive industries that consume more

than 5,000 tons of coal annually, while that limitation is not provided for imports.<sup>22</sup> The use of such different metrics to determine the applicable number of required allowances is unlikely to ensure that foreign imports are always treated as well or better than their domestic counterparts.

Price considerations may also raise national treatment concerns. For example, although a foreign company may purchase U.S. allowances or credits from foreign countries with “comparable” cap-and-trade programs, the compliance costs for U.S. industry may be reduced by the opportunity to gain free or low-cost allowances from both federal and subsequent state allocations. In fact, S. 1766 specifically instructs states to distribute their federally-obtained allowances in order to, *inter alia*, “mitigate impacts on energy-intensive industries in internationally competitive markets.”<sup>23</sup> Domestic industries will likewise have opportunities to earn additional low-cost allowances through early reduction efforts,<sup>24</sup> domestic offset<sup>25</sup> and sequestration projects,<sup>26</sup> and approved international offset opportunities.<sup>27</sup> Importers, however, will be largely ineligible for such carbon subsidies,<sup>28</sup> and may only purchase and bank “international reserve allowances” from the U.S. government at prices capped by the market price of that year’s domestic credits.<sup>29</sup> Additionally, S. 1766 does not grant foreign producers access to the U.S. domestic allowance allocation processes, auctions, or trading markets. S. 1766 also fails to take into account foreign manufacturers’ sequestration efforts.

In short, despite capping the cost of international reserve allowances at the domestic allowances’ market price for that year, the additional opportunities available to domestic manufacturers for obtaining allowances at lower costs will again make it difficult to ensure that foreign goods will always be treated as well or better than similar domestic products.

### **Affirmative Defenses under GATT Article XX**

Even if a border measure violates the principle of national treatment, it can avoid running afoul of WTO/GATT obligations if it satisfies one of the “affirmative defenses” under Article XX of the GATT.<sup>30</sup> The most relevant affirmative defense probably lies in Article XX (g), which exempts from WTO/GATT obligations those measures “relating to the conservation of exhaustible natural resources.”<sup>31</sup>

#### ***The Article XX(g) Defense***

To satisfy this provision of the GATT, a measure must be “related to” its stated policy goals such that the measure is not overly broad.<sup>32</sup> Taking the provisions of Bingaman/Specter bill as a model, any U.S. emissions-based import measure would be directed only toward those countries without “comparable” emissions regulation, and thus will likely satisfy this standard. Other features of S. 1766, such as the inclusion of a *de minimis* exception and carve-outs for the least-developed developing

countries, further ensure that the measure will not be seen as overly broad.<sup>33</sup>

However, the Article XX (g) exception also requires a reasonable means/ends relationship exist between a measure and its goal—here, the import allowance scheme and lower global GHG emissions.<sup>34</sup>

Under the allowance system proposed in S. 1766, when an individual foreign producer reduces emissions, the amount of that country's excess emissions attributable to the producer's category of goods will theoretically fall. Although this would presumably lower the number of credits required for importation, the exporter may not benefit, regardless of how carbon efficient, since the Act's calculation is based on *nationwide*, not exporter-specific, emissions levels and production volumes. Given that a single foreign producer's emissions reduction might not affect significantly these national metrics, S. 1766 does not provide an individual exporter much incentive to invest in cleaner technology.



### *The Chapeau to Article XX*

Any measure seeking exception from WTO/GATT obligations must likewise satisfy the mandate of Article XX's introductory paragraph or "chapeau," which bars a country from using this exception to the GATT's national general treatment obligation to impose an "arbitrary or unjustified discrimination between countries where the same conditions prevail," or to adopt a "disguised restriction on international trade."<sup>35</sup> In recent years, interpretation of the chapeau has become more stringent, such that exacting care must be taken to treat foreign and domestic producers even-handedly in a measure's application.

In order to best satisfy the chapeau, policy makers should design an allowance purchase requirement placed on imports to accommodate other countries' regulatory regimes of choice, negotiated multilaterally such that all avenues of international cooperation are exhausted and applied in the same manner across all nations. Transparent processes of certification and review should be available for all countries seeking status as "comparable" to U.S. emissions regulation. S. 1766 generally incorporated these concerns into the text, with specific provisions touting the importance of international negotiation, allowing foreign countries to adopt a regulatory regime of their choice so long as it is "comparable in effect" to the U.S. system.<sup>36</sup> The proposed legislation also sets out formal processes and dead-

lines for determining which countries will be subject to import requirements.

However, some of the bill's provisions have the potential to violate the even-handedness requirement of the chapeau. For instance, while foreign producers must submit their declaration and accompanying credits before their product is allowed to enter the United States, domestic manufacturers must only submit their credits for the calendar year by March 31 of the subsequent year.<sup>37</sup> To the extent that these different deadlines give domestic firms more time and opportunity to obtain allowances when prices are most favorable, opponents may view the application of S. 1766 as less than even-handed. Similarly, the impact of S. 1766 may vary greatly based on the extent to which the President exercises his authority under the Act to exclude and modify its provisions and its applicability to certain countries, industries, and goods.

No matter how the value of an allowance scheme is calculated, there is likely to be too much uncertainty in its application to ensure that like foreign and domestic products would be "similarly taxed." Thus, it is unlikely that this approach could survive *prima facie* GATT Article III scrutiny. Nevertheless, an Article XX affirmative defense may be available although the strict interpretation given to the Article XX chapeau makes any such defense far from assured. The text of S. 1766 was plainly crafted with WTO/GATT obligations in mind, and seeks to establish a scheme of implementation and application in line with the mandates presented by the chapeau. If S. 1766 satisfies the means/ends test in Article XX (g) and remains even-handed in its application, its import allowance provisions might meet the necessary standards of U.S. WTO obligations.

### **CONCLUSION**

As the United States moves toward establishing policies to address GHG emissions, it must ensure that its policies are enacted to be consistent with the legal protections afforded to member states under the WTO's international trade regime. For ethanol, in light of continual growth in U.S. consumption, it may be only a matter of time before a U.S. trading partner seeks to dismantle the U.S. system of preferences and tariff barriers. For border measures in the form of carbon allowances, the United States must facilitate even-handedness in the enactment of any system. The United States has an opportunity to move to the forefront of environmentally responsible policies that are consistent with international trade obligations. The future will tell whether the Congress can get there successfully. **BLB**

## ENDNOTES: *Matthew Nicely; Valerie Ellis*

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<sup>1</sup> President George W. Bush, State of the Union Address, Jan. 23, 2007 (transcript available at <http://www.whitehouse.gov/news/releases/2007/01/20070123-2.html>)

<sup>2</sup> Raymond Colitt, *Brazil to Seek Lower U.S. Tariffs, Accord on Ethanol*, REUTERS, Feb 28, 2007, available at <http://www.reuters.com/article/latestCrisis/idUSN28262025>.

<sup>3</sup> See Brent D. Yacobucci, Congressional Research Service (CSR), Code No. RS21930, *Ethanol Imports and the Caribbean Basin Initiative*, (Mar. 10, 2006), available at <http://www.ncseonline.org/NLE/CRS/abstract.cfm?NLEid=177>.

<sup>4</sup> See Office of the United States Trade Representative, *Ethanol Provisions in the CAFTA-DR* (Policy Brief, Feb. 2005), available at <http://www.fas.usda.gov/itp/CAFTA/Ethanol.pdf>.

<sup>5</sup> General Agreement on Tariffs and Trade 1994 art. III, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Legal Instruments—Results of the Uruguay Round vol. 1, 33 I.L.M. 1154 (1994) [hereinafter GATT]

<sup>6</sup> GATT, *supra* note 5, art. I.

<sup>7</sup> GATT art. III. See also WT/DS 8, 10, 11/AB/R Japan—Taxes on Alcoholic Beverages (Japan—Alcoholic Beverages II<sup>7</sup>) adopted by the WTO Dispute Settlement Body on November 1, 1996, pg. 26.

<sup>8</sup> GATT art XXIV.

<sup>9</sup> GATT, *supra* note 5, art. XXIV.

<sup>10</sup> Pascal Lamy, Director-General, Opening Remarks at the WTO Conference on Multilateralizing Regionalism, (Sept. 10, 2007), available at [http://www.wto.org/english/news\\_e/sppl\\_e/sppl67\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl67_e.htm).

<sup>11</sup> Energy Tax Act of 1978, Pub. L. No. 95–618, 92 Stat. 3174 (codified as amended in scattered sections of 19, 23, 26, and 42 U.S.C.)

<sup>12</sup> *Id.*

<sup>13</sup> The U.S. Government has, since 1978, continuously maintained federal ethanol tax incentives. Congress extended these tax incentives in the Crude Oil Windfall Profit Tax Act of 1980, the Omnibus Budget Reconciliation Act of 1990, the Transportation Efficiency Act of the 21<sup>st</sup> Century (1998), and most recently in the Energy Policy Act of 2005.

<sup>14</sup> Agreement on Subsidies and Countervailing Measures art. 1.1(a)(1), (b), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Legal Instruments—Results of the Uruguay Round, 1867 U.N.T.S. 14, 33 I.L.M. 1125 (1994) [hereinafter SCM Agreement] *reprinted* in World Trade Org., *The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 2* (1999) [hereinafter Legal Texts] available at [www.wto.org/English/docs\\_e/legal\\_e/24-scm.pdf](http://www.wto.org/English/docs_e/legal_e/24-scm.pdf).

<sup>15</sup> GATT, *supra* note 5, art. XXIII(1)(b).

<sup>16</sup> Climate change bills incorporating a cap-and-trade regime have been introduced in both the House and Senate during the 110<sup>th</sup> Congress. For a summary of the major bills, see Jonathan L. Ramseur & Brent D. Yacobucci, Congressional Research Service (CRS), Code No. RL34067, *Climate Change Legislation in the*

*110<sup>th</sup> Congress*, (Jul. 17, 2007), available at <http://www.ncseonline.org/NLE/CRSreports/07Jul/RL34067.pdf>.

<sup>17</sup> See Bruce Stokes, *Trade Winds Hit Climate Bills*, NATIONAL JOURNAL (Jul. 7, 2007).

<sup>18</sup> See Low Carbon Economy Act of 2007, S. 1766, 110th Cong. (2007) available at <http://thomas.loc.gov/cgi-bin/query/z?c110:S.1766> [hereinafter LCEA].

<sup>19</sup> *Id.* § 502(e)–(f).

<sup>20</sup> *Id.* § 102(a)(1).

<sup>21</sup> *Id.* § 502(e)(2)(1)–(f)(1)(A).

<sup>22</sup> *Id.* § 3(6)(a)(i), (22).

<sup>23</sup> *Id.* § 204(c)(1)(H).

<sup>24</sup> *Id.* § 206..

<sup>25</sup> *Id.* § 303(a).

<sup>26</sup> *Id.* § 302.

<sup>27</sup> *Id.* § 501(e).

<sup>28</sup> *Id.* § 502(f)(4)(C)(ii).

<sup>29</sup> *Id.* § 502(f)(4)(A)(iii)(I).

<sup>30</sup> GATT, *supra* note 5, art. XX.

<sup>31</sup> *Id.* art. XX(g).

<sup>32</sup> *Id.* art. XX..

<sup>33</sup> LCEA, *supra* note 18, § 502(f)(3)(A)(ii).

<sup>34</sup> GATT, *supra* note 5, art. XX.

<sup>35</sup> GATT, *supra* note 5, art. XX.

<sup>36</sup> LCEA, *supra* note 18, § 502.

<sup>37</sup> See *id.* §§ 102, 602.

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<sup>1</sup> U.S. DEPARTMENT OF EDUCATION, INSTITUTE OF EDUCATION SCIENCES, NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATION STATISTICS: 2006 (Jul. 2007).

<sup>2</sup> *Id.*

<sup>3</sup> AMERICAN ELECTRONICS ASSOCIATION, CYBERSTATES 2007: A STATE-BY-STATE OVERVIEW OF THE HIGH-TECHNOLOGY INDUSTRY (Apr. 2007) [hereinafter AeA 2007 Overview] (based on data from the U.S. BUREAU OF LABOR STATISTICS, EMPLOYMENT AND WAGES, ANNUAL AVERAGES (2007)).

<sup>4</sup> *Id.*

<sup>5</sup> AMERICAN ELECTRONICS ASSOCIATION, WE ARE STILL LOSING THE COMPETITIVE ADVANTAGE: NOW IS THE TIME TO ACT (Mar. 2007).

<sup>6</sup> U.S. BUREAU OF LABOR STATISTICS, CURRENT POPULATION SURVEY (2007).

<sup>7</sup> MANPOWER, INC., ANNUAL TALENT SHORTAGE SURVEY (Mar. 2007).

<sup>8</sup> AeA 2007 Overview, *supra* note 3.

<sup>9</sup> See Wadhwa, Vivek et al., *America's New Immigrant Entrepreneurs*, Master of Engineering Management Program, Duke University and the School of Information at the University of California, Berkeley, Jan. 4, 2007.

<sup>10</sup> Anonymous.

<sup>11</sup> *U.S. High-Tech Jobs Accelerating Again*, IEEE SPECTRUM ONLINE, Apr. 24, 2007.