Using Ethanol as a Fuel to Reenergize Free Trade Area of the Americas Negotiations

I. Introduction

Many people believe the current trade talks through the World Trade Organization ("WTO"), the Doha Round, will end unsuccessfully.[1] The current lack of an agreement among the approximately 149 WTO members has renewed discussions for bilateral and regional trade agreements.[2] One potential free trade agreement that revived itself as a result of the collapse of the Doha Round is the Free Trade Area of the Americas ("FTAA").[3] Differences in opinion between the United States of America and Brazil had previously caused friction in already difficult negotiations for the FTAA, similar to the issues between developing and developed countries that complicated the Doha Round.[4] This paper will argue that eliminating the current

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[1] *See* Economic Focus, *Least Favoured Nation,* ECONOMIST, Aug. 5-11th, 2006, at 68 (hereinafter *Least Favoured Nation*) (stating that the bigger members of the WTO could have avoided the indefinite suspension of the Doha Round of trade talks on July 24th 2006, if they asked more of themselves than of their rivals).

[2] *See, e.g.,* Kevin C. Kennedy, *The FTAA Negotiations: A Melodrama in Five Acts*, 1 LOY. U. CHI. INT'L L. REV. 121, 130-31 (2004) (noting Brazil's response to the United States to have FTAA negotiations for investment, competition policy, and government procurement completed within the Doha Round, if the United States wanted agricultural subsidies and antidumping rules to be negotiated within the WTO resulting in a partial shelving of the FTAA).

[3] *See* Thomas Andrew O'Keefe, *Potential Conflict Areas in any Future Negotiations Between MERCOSUR and the NAFTA to Create a Free Trade Area of the Americas*, 14 ARIZ. J. INT'L & COMP. L. 305, 305 (1997) (stating that the leaders of the countries in the Western Hemisphere, except Cuba, agreed to begin negotiations to create a FTAA).

[4] *See* Kennedy, *supra* note 2, at 130-31 (observing that the issues that have divided the WTO

tariff on ethanol will be a good point to restart FTAA negotiations, will aid politicians' goal of obtaining energy independence for the Untied States, and it will simply the current tariff structure for ethanol.[5]

II. Background

A. The Dream of a Free Trade Area for The Americas

In 1994 the Summit of the Americas was held in Miami, at which the leaders present established the basis for a FTAA in their Plan of Action.[6] This lead to ministerial meetings in order to prepare for the negotiations, which were launched from the Santiago Summit in 1998

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members at Cancun and during the Doha Development Round, agricultural subsidies and market access for agricultural products, could also lead to the failure of FTAA negotiations).

[5] *See* Conference, *Trade as a Guarantor of Peace, Liberty and Security? The Role of Peace in the Bretton Woods Institutions*, 20 AM. U. INT'L L. REV. 1133, 1138 (2005) (hereinafter Conference) (informing that there are pressures in the United States and Europe to include sustainable development and other non-trade issues in the WTO's mandate); *see also* Feature, *World News*, 6 SUSTAINABLE DEV. L. & POL'Y 70, 70 (2006) (reporting that ethanol produced from sugar cane in Brazil is less costly than ethanol produced from corn in the United States, and that Brazil currently has the largest sugar cane industry in the world).

[6] *See* O'Keefe, *supra* note 3, at 305; *see also* Summit of the Americas, *Trade, Investment, and Financial Stability*, http://www.summit-americas.org/Quebec-Trade/trade-eng.htm (last visited Dec. 4, 2006) (hereinafter Summit of the Americas) (informing that the preparatory meetings to begin FTAA negotiations lasted years).

where leaders committed themselves to actual progress by 2000.[7] Negotiations continued and in 2004 the Special Summit was held where the leaders reaffirmed their commitment to the Doha Round in the Declaration of Nuevo León, possibly as a result of the difficulty finding an agreement between countries in the FTAA negotiations.[8] Then recently in 2005 leaders at the Summit of the Americas issued their Declaration of Mar del Plata reiterating their desire to achieve a balanced and comprehensive FTAA agreement.[9] Since the Doha talks seems to have ended in failure, at least for now, talks of the FTAA have resurfaced as countries are pursing various regional and bilateral agreements.

B. The Hopes and Failure of the Doha Round of Trade Talks

In November 2001 at the Fourth WTO Ministerial Conference, WTO members launched the Doha Round of trade talks from Qatar.[10] The world's trade ministers agreed to begin trade

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[7] *See* Summit of the Americas, *supra* note 6 (reiterating the mandates from the Miami Summit, the Santiago Summit expanded the FTAA mandate to include tariffs, non-tarrif barriers, investment, subsidies, agriculture, intellectual property rights, government procurement, trade remedies, sanitary and phytosanitary standards, rules of origin, dispute resolution, and competition policy, standards, and procedures).

[8] *See id.* (reaffirming their commitment to the Doha Agenda in hopes of promoting better market access, elimination of export subsidies, and reduction of trade distorting domestic support especially for agricultural products).

[9] *See id.*

[10] *See* Marcos Jank & Mário Jales, *On Product, Box and Blame-Shifting: Negotiating Frameworks for Agriculture in the WTO Doha Round* 58-59 (Washington, DC and Paris: Inter-American Development Bank & Centre d'Etudes Prospectives Internationales 2004) *available at*

talks under the Doha Round and promised that they would complete the negotiations in three years.[11] Doha's emphasis was to help the poorest countries by liberalizing trade in agricultural goods and services.[12] However, progress on these issues were slow and insufficient. Although Doha reached an agreement on cutting some domestic support and eliminating some export subsidies for agriculture goods from rich counties, emerging economies refused to compromise on industrial tariffs until they saw more progress in agricultural trade.[13] Adding pressure to find a comprise is the fact that George Bush's trade promotion authority expires in 2007 leaving many to agree that the unofficial deadline for any Doha agreement is the end of 2006.[14] Unfortunately, emerging and developed economies believed the concessions provided to each other were insufficient to continue with the negotiations, thus missing an opportunity for a successful Doha agreement.

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http://www.iconebrasil.org.br/Documentos/i_INTAL_IYT_22_2005_Jank_Jales.pdf.

[11] *See Delivering on Doha's Promise*, ECONOMIST, Jan. 6, 2005, in Leaders Section (considering the timeline ambitious, and the subsequent delay unsurprising since all global trade rounds have yet to successfully complete by the time originally scheduled).

[12] *See id.*

[13] *See id.* (detailing the deadlock as a creation between developed and emerging economies, since developed countries hesitated to further liberalize agricultural trade until they saw more progress on industrial goods and services, and the opposite is true for emerging countries).

[14] *See id.*; *see also* BRIGID STARKEY, MARK A. BOYER, & JONATHAN WILKENFELD, NEGOTIATING A COMPLEX WORLD 49-51 (Rowman & LittleField 2005) (discussing how time pressures can influence negotiations resulting in "a maxim to the effect that 90 percent of a negotiation takes place in the last 10 percent of time allowed").

C. America's Desire to End its Dependence on Foreign Energy, Especially Petroleum Products

The United States imported more than three and a half billion barrels of crude oil in 2004 to help satisfy Americans' ever growing thirst for gasoline used for ground transportation.[15] America's increasing dependence on foreign oil creates possible problems for the country including economic insecurity, continued large current account deficits, and financing tyrannical leaders and terrorists with American oil money.[16] Since the shock of the Arab oil embargo and the subsequent history of oil, these threats have become increasing clear to Congress, resulting in the importance of energy diversification to increase.[17] Thus, Congress now has an opportunity to properly address a low priority issue, the environment, under the guise of a high priority issue,

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[15] *See* C. Boyden Gray & Andrew R. Varcoe, *Octane, Clean Air, and Renewable Fuels: A Modest Step Toward Energy Independence*, 10 TEX. REV. L. & POL. 9, 55 (2005) (stating that in 2004 the United States used approximately 130 billion gallons of gasoline just for ground transportation); *see also* Energy Information Administration, http://tonto.eia.doe.gov/dnav/pet/pet_move_imp_dc_NUS-Z00_mbbl_a.htm (last visited Nov. 26, 2006).

[16] *See* Gray & Varcoe, *supra* note 15, at 10 (believing that the United States heavy reliance on petroleum for transportation results in an increasing threat to American economic and security interests, partly as a result of increasing petrol prices, increasing uncertainty over long term oil supplies, and oil resources controlled by dictatorial leaders).

[17] *See* 42 U.S.C. § 8801 (codifying congressional findings that the United States must reduce its dependence on imported petroleum and natural gas by all economically and environmentally possible means, specifically including the use of biomass energy as an alternative fuel).

economic and national security.[18]

The United States is presently the world second largest producer of ethanol behind Brazil.[19] Currently the domestic ethanol industry is in a period of rapid growth, however it currently lacks the capacity to produce enough ethanol to create a gasohol blend of ten percent ethanol to replace gasoline across the United States.[20]

D. Current Tax Structure for Ethanol Imported Into the United States

Currently the United States imposes a 2.5 percent *ad valorem* tax along with a 14.27 cents per liter tax on imported ethanol from countries with normal trade relations under the harmonized tariff schedule.[21] However, the United States exempts many countries from this

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[18] *See* STARKEY, BOYER, & WILKENFELD *supra* note 14, at 86-88 (defining high-politics issues as ones traditionally recognized as threatening the survival of the state, while considering low-politics issues as ones not threatening to the survival of the state, such as the environment, foreign aid, and health).

[19] *See* RENEWABLE FUEL ASSOCIATION, RENEWABLE ENERGY SERVICES: AN EXAMINATION OF U.S. AND FOREIGN MARKETS, UNDER SECTION 332(G) OF THE TARIFF ACT OF 1990 7 (2005) (submitted testimony of Larry Schafer), http://www.ethanolrfa.org/objects/documents/66/itctestimony041905.pdf (hereinafter RFA) (listing 2004 world ethanol production where Brazil and the United State accounted for over seventy percent of global production, with Brazil producing 400 million gallons more than the United States).

[20] *See id.* at 1-2 (stating that the ethanol industry is the fastest growing industry in rural America and reducing the 2005 trade deficit by 5.1 billion dollars).

[21] *See* HTSUS § XXII Ch. 99 (2006 Supp. 1, 2d Rev.) (imposing a 14.27 cents per liter tariff on

tariff or reduces the tariff under various free trade agreements or initiatives.[22] In addition to the U.S. ethanol tariff the U.S. partially exempts ethanol from a federal excise tax on motor fuel.[23] The government based the exemption on the quality and amount of ethanol blended in a gallon of fuel, coincidently the exemptions equal 14.27 cents per liter, which is the same amount as the *ad valorem* tariff imposed on non-beverage ethanol.[24] People in favor of the tariff argue that the tax protects a young domestic industry, promotes the growth of the industry, and prevents the United States from subsidizing foreign ethanol production.[25]

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imported ethanol to be used as a fuel or in a mixture to be used in a fuel); HTSUS § IV Ch. 22 (2006 Supp. 1, 2d Rev.) (imposing a 2.5 percent *ad valorem* duty on ethanol imported for non-beverage purposes).

[22] *See* UNITED STATES INTERNATIONAL TRADE COMMISSION, PUBL'N NO. 3701, THE ECONOMIC EFFECTS OF SIGNIFICANT U.S. IMPORT RESTRAINTS 48 (2004) (listing Generalized System of Preferences (GSP), North American Free Trade Agreement (NAFTA), African Growth and Opportunity Act (AGOA), and Caribbean Basin Economic Recovery Act (CBERA) countries along with Israel, Jordan, Chile, and Singapore as the countries that receive reduced or exempt tariffs on ethanol imports to the United States).

[23] *See id.* at 47 (explaining that the United States imposes an 18.4 cents per gallon federal excise tax on motor fuels).

[24] *See id.* (informing that the 2002 federal excise tax exemption for ethanol was 54 cents per gallon of ethanol, which is the approximately 14.27 cents per liter).

[25] *See* National Corn Growers Association v. Baker, 840 F.2d 1547, 1549 (Fed. Cir. 1988) (acknowledging domestic ethanol producers' argument that exemption from a sixty cents per gallon duty results in a sort of subsidy for importers of non-pure ethanol).

One staunch supporter of the ethanol tariff is Senator Chuck Grassley of Iowa.[26] Along with other senators, Senator Grassley has opposed lifting the ethanol tariff stating the domestic supplies are sufficient to meet demands and that the only other major producer, Brazil, lacks sufficient supplies to export ethanol at significant levels.[27]

III. Analysis

The issues that resulted in Doha's failure also caused FTAA negotiations to temporarily stall since both Brazil and the United States wanted certain FTAA issues negotiated at the WTO level.[28] One way to possibly ease the negotiations over these difficult issues is to begin with other simpler issues to negotiate, thus creating goodwill and momentum in the negotiations.[29]

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[26] *See* Letter from Chuck Grassley, U.S. Senator, to George W. Bush, U.S. President (May 12, 2006) (on file with author), *available at* http://grassley.senate.gov/index.cfm?FuseAction=PressReleases.View&PressRelease_id=5060 (hereinafter Letter from Senator Grassley to President Bush) (requesting President Bush to reconsider his call on Congress to temporarily lift or suspend the duty on imported ethanol).

[27] *See* 152 CONG. REC. S4106 (daily ed. May 5, 2006) (statement of Senator Grassley). *But see* RFA, *supra* note 19 (acknowledging that Brazil produces more ethanol than any other country).

[28] *See* Kennedy, *supra* note 2, at 131 (mentioning that some countries in the FTAA negotiations wanted to resolve certain issues like agricultural subsidies and government procurement under the Doha negotiations).

[29] *See* STARKEY, BOYER, & WILKENFELD, *supra* note 14, at 131 (recommending that negotiators focus on interests, such as creating a market for renewable fuels like ethanol, rather than on positions, like continued subsidies, in order to build trust among negotiation adversaries and increase confidence in the negotiations).

The United States could initiate this process with a discussion of reducing or eliminating its ethanol tariff and adjusting some domestic legislation, thus allowing ethanol to satisfy America's energy thirst.[30] In addition, a successful ethanol agreement may create many positive effects later in the negotiations and for the Americas.[31] First, it would reduce America's dependence on oil and potentially improve the United States security interests.[32] An agreement on ethanol would bring issues traditionally left out of free trade agreements into the negotiations and ultimately into the agreement for a FTAA.[33] The agreement may even satisfy the sugar industry

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[30] *See, e.g.,* Gray & Varcoe, *supra* note 15, at 16-18 (describing how originally car manufacturers had interests in using alcohol as a fuel, on its own or blended with gasoline, but history prevented them from doing so because of a large excise tax on alcohol during the Civil War made it cost prohibitive, then Prohibition made alcohol scarce, and lastly cheap oil made ethanol uncompetitive).

[31] *See* STARKEY, BOYER, & WILKENFELD, *supra* note 14, at 130 (noting that the strategy of accentuating common grounds while downplaying areas of disagreements builds better relationships among the parties).

[32] *See* Brian R. Farrell, *Fill 'Er Up With Corn: The Future of Ethanol Legislation in America*, 23 J. CORP. L. 373, 377 (1998) (quoting congressional findings that the United States is dependent for a growing share of its energy needs on the Middle East); Gray & Varcoe, *supra* note 15 at 10 (believing that U.S. oil dollars may finance terrorism).

[33] *See* Farrell, *supra* note 32 at 377 (stating that Congress found that ethanol blended with gasoline produces a cleaner fuel when burned and that it can be produced from renewable resources like grain); Conference, *supra* note 5 at 1138 (explaining that political pressure in the developed countries is building to include all issues of an international economic nature, like

to allow greater market access for Latin America, resulting in less poverty.[34]

A. Reduction of the Ethanol Tariff May Restart FTAA Negotiations Since it Addresses Some of the Concerns that Derailed Doha and Result in a Successful Agreement for the Entire Hemisphere

Originally free trade agreements began among neighboring countries and had a narrower scope than they do today.[35] Although, today countries are entering global agreements in the traditional areas such as security and economic interests, along with agreements that include environmental concerns, climate control, and an assortment of other issues.[36] The United States can repair some of its negative image on climate control and the environment caused by its refusal to sign the Kyoto Protocol, by promoting the use of ethanol throughout the Americas.[37]

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sustainable development and the environment into trade agreements).

[34] *See* Gray & Varcoe, *supra* note 15, at 12 (arguing that an increase in ethanol for fuel use could open the path to absorbing agricultural surpluses in developed countries, which have hindered regional and global trade talks and hampered third world development).

[35] *See, e.g.,* James R. Holbein & Gary Carpentier, *Trade Agreements and Dispute Settlement Mechanisms in the Western Hemisphere*, 25 CASE W. RES. J. INT'L L. 531, 532-33 (1993) (discussing some of the steps to an Americas hemispheric trade agreement, with one of the earlier major steps being the negotiations of NAFTA, which had aspects based on the Canada-United States FTA, hopefully leading to create a free trade zone from Anchorage to Tierra del Fuego).

[36] *E.g.,* STARKEY, BOYER, & WILKENFELD, *supra* note 14, at 9-20 (discussing global climate change negotiations, particularly in the Kyoto context that resulted in the Kyoto Protocol, ratified by over sixty five countries as an example of an issue with growing importance).

[37] *See id.* at 15, 20 (stating that many environmentalist were watching the Kyoto negotiations to

Furthermore, a substantial percentage of Americans support steps to curb emissions of greenhouse gases, which would allow the United States to include climate concerns in the FTAA because it would create increase demand for agricultural products, like sugar and corn, which may possibly reduce opposition from agricultural economies for environmental standards.[38] Additional effects of increased agricultural production may reduce poverty in other countries that join the agreement, thus increasing the power of labor groups, which would seek increased safety standards.[39]

The belief that demand creates supply may also reduce the domestic sugar industry

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see if the United States would redeem its environmental credentials, however after the negotiations the United States failed to ratify the Kyoto Protocol).

[38] *See* Charles J. Hanley, *U.S. Pushed Toward Emissions Control*, NEWOBSERVER.COM, Nov. 19, 2006, http://www.newsobserver.com/102/story/512225.html (acknowledging that in the United States political pressure is growing, regardless of party, to address greenhouse gas emissions, especially since California passed state level reductions on greenhouse gases).

[39] *See* Jessica Holzer, *Ethanol Gusher!*, FORBES, Oct. 9, 2006, http://www.forbes.com/personalfinance/investingideas/2006/10/06/energy-ethanol-investing-biz-energy_cx_jh_1009ethanol_energy06.html (hereinafter *Ethanol Gusher!*) (acknowledging that the United States lacks the resources to quickly convert food to ethanol without affecting its food supply and that production of cellulosic ethanol, which does not affect food supply, needs further development before it can replace gasoline with E10, a blend of ten percent ethanol and the ninety percent gasoline that can run in all modern cars).

hostility to the importation of foreign sugar.[40] While ethanol can be produced from various crops, the high cellulose context of sugar makes it an ideal source for ethanol production, which is one reason why Brazil's ethanol industry uses sugar over other crops.[41] Other nations may have a labor advantage when producing sugar but by increasing demand United States sugar producers will have less to fear from foreign competition, furthermore by promoting environmental standards in the FTAA, future negotiations will be more likely to contain stricter environmental requirements, thus leveling the playing field between agricultural producers from developed nations and those from developing nations.[42] Lastly, the entire American agricultural

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[40] *See* James R. Holbein, Symposium Speech, *An Analysis of Agricultural Trade Disputes Under NAFTA*, 28 Ohio N.U.L. Rev. 639, 639 (2002) (asserting that farmers are always an important political constituency, since agriculture goes to the core of every country's national security and its ability to support whenever necessary).

[41] *See* Christopher Joyce, *Study Backs Ethanol as Gasoline Substitute*, NPR, Jan. 26, 2006, http://www.npr.org/templates/story/story.php?storyId=5173420 (explaining that corn is not the future of ethanol because it lacks any significant energy advantage over fossil fuels, however saying that the future of ethanol will rely on plants with high cellulose content, such as switch-grass or sugar cane); *see also* Feature, *World News*, 6 SUSTAINABLE DEV. L. & POL'Y 70, 70 (2006) (informing that Brazil derives its ethanol from sugar cane, and that they have the largest sugar industry in the world).

[42] *See generally* CAFTA POLICY BRIEF, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, CAFTA FACTS: ENVIRONMENTAL FIRSTS IN CAFTA 1 (Fed. 2005), http://www.ustr.gov/assets/Trade_Agreements/Bilateral/CAFTA/Briefing_Book/asset_upload_file601_7194.pdf (asserting that CAFTA goes beyond NAFTA in the environmental chapter, for

industry can reduce its costs and increase its profits by embracing a competitive ethanol market because it would reduce their soaring fuel costs, due to the increased price of oil, and increase their profits as a result of growing demand for cleaner fuels.[43]

B. An Agreement on Ethanol will Ensure that the United States gets on track to Obtaining Safer Energy Sources and Possibly Closer to Energy Independence

The United States imports massive amounts of oil to meet its energy needs, and a substantial portion from the Middle East.[44] Furthermore the high demand for oil raises the prices and increases oil profits for countries the that are hostile to the United States, like Iran.[45] While the growth of an ethanol market may create trade diversion away from the Middle East as the United States relies less on oil and more on renewable fuels, the continued purchase and trade in the Middle East does not guarantee increased security for the United States.[46] Therefore, it

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example, CAFTA lowers the threshold to move a case forward to development of a factual record).

[43] *See Ethanol Gusher!*, *supra* note 39 (noting that high oil prices along with political and consumer interests are attempting to wean America off its petroleum habit, consequently creating a rush in ethanol investment).

[44] *See* Energy Information Administration, http://tonto.eia.doe.gov/dnav/pet/pet_move_impcus_a2_nus_epc0_im0_mbbl_m.htm (last visited Nov. 26, 2006) (listing U.S. imports of crude oil by country or origin).

[45] *See, e.g.,* Symposium, *Renewable Energy Sources for Development*, 32 ENVTL. L. 331, 338 (commenting that Brazil's expansive use of ethanol resulted in the country halving its oil imports).

[46] *See* Conference, *supra* note 5, at 1141-42 (questioning the belief that trade creates peace by

appears that America's interests are better served by purchasing energy from its neighbors and helping the development of their economies instead of funding hostile governments or terrorist farther abroad.

C. Creating a Comprehensive Agreement on Ethanol will Reduce the Web of Exceptions Currently Applied, Consequently Simplifying the Customs Structure and Reducing Bureaucracy

One other reason the United States should embrace an more open ethanol market is potential for simplifying the current customs structure in regards to ethanol. The United States currently applies different rates depending on the country of origin for the ethanol or the amount imported.[47] By creating a FTAA where ethanol is trade freely the United States can simply its ethanol structure based on NAFTA, CAFTA, CBI, GSP, ATP, and the various FTA with other counties in the Americas to one single agreement hopefully simplifying all these agreements into one.

IV. Conclusion and Recommendations

In conclusion, the United States should offer to re-jump start negotiations for the FTAA with the opening of the ethanol market. While this goal will liberalize trade in agricultural products it will also increase America's security by decreasing its dependence on foreign oil,

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providing instances were increase trade led to conflict including the two World Wars, which were preceded by unprecedented world market integration, the two Palestinian intifadas, which were preceded by integration of the Palestinian and Israeli economies, and the American Civil War, which was partially caused by a common market and common external tariff since the South wanted cheap industrial imports and the North wanted to protect its industrial economy).

[47] *See supra* notes 17-18 and accompanying text (providing a quick overview of the current ethanol tariffs and countries or groups of countries that qualify for exceptions).

particularly Middle Eastern oil.[48] Even though encouraging an ethanol market many not necessarily achieve Congress's optimistic goal of energy independence, it does shift American energy dollars away from a region that is increasingly hostile to the United States, to a region that is increasingly integrating with the United States.[49] Furthermore, a simplification of the tariff structure for ethanol or many other goods under a hemispheric trade zone may reduce government bureaucracy since goods throughout the hemisphere will be treated equally in theory.

Lastly, in response to the argument that eliminating the ethanol tariff and keeping the tax break for ethanol will result in the United States subsidizing foreign ethanol, Congress can change the point at which the tax break applies.[50] Instead of applying the tax credit after the ethanol is mixed into the fuel, it can be applied at the point the ethanol is produced.[51] However,

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[48] *See* Gray & Varcoe, *supra* note 15, at 10 (outlining some of the major dangers of oil dependence, which includes American oil expenditures financing terrorism and tyranny); Holbein, *supra* note 40 at 639 (informing that disputes involving agricultural products may include alcoholic beverages, fisheries products, and lumber, thus showing that agricultural products are not limited to preprocessed grown or raised goods and could include ethanol);

[49] *See* 42 U.S.C. § 8801 (expressing the hope of reducing America's dependence on foreign non-renewable fuels).

[50] *See* Letter from Senator Grassley to President Bush, *supra* note 26 (decrying the idea of suspending the ethanol tariff because it would act as a further subsidy to Brazil's ethanol and sugarcane industry).

[51] *See id.* (acknowledging that American gasoline refiners receive a tax credit for every gallon of ethanol they blend with gasoline, regardless of the ethanol's origin, thus incorporating a potential

under this scenario Congress would need to ensure that the tax credit is being offered only for domestically consumed ethanol and not as an export subsidy or the United States may face countervailing duties.[52] Another option, less likely to face countervailing duties, is to create a price floor for domestically produced and domestically consumed ethanol. This would ensure that when the price of ethanol drops below a certain point, due to imports or any other factor, that the ethanol producer would still receive a minimum payment that would encourage the growth and development of the ethanol treatment. This approach may avoid being classified as an export subsidy, and should be in line with national treatment because the ethanol producer receives the market value for the ethanol, just as imported ethanol would, and then the government compensates the producer for the difference in the market value and the price floor, if the market value is below the floor.

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solution to avoid the United States subsidizing foreign ethanol or sugarcane by specifying a requirement of domestic ethanol for the tax credit or apply it to a different point in the production process).

[52] James Holbein, *The Administration of Chapter 19 Binational Proceedings Under NAFTA,* 5 U.S.-MEX. L.J. 57, 58 (1997) (defining the difference between antidumping and countervailing duties, where antidumping duties are imposed on goods that are sold at less than fair value, while countervailing duties are a trade remedy used in response to unfair government subsidies).