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WORLD TRADE ORGANIZATION & U.S. TRADE ISSUES

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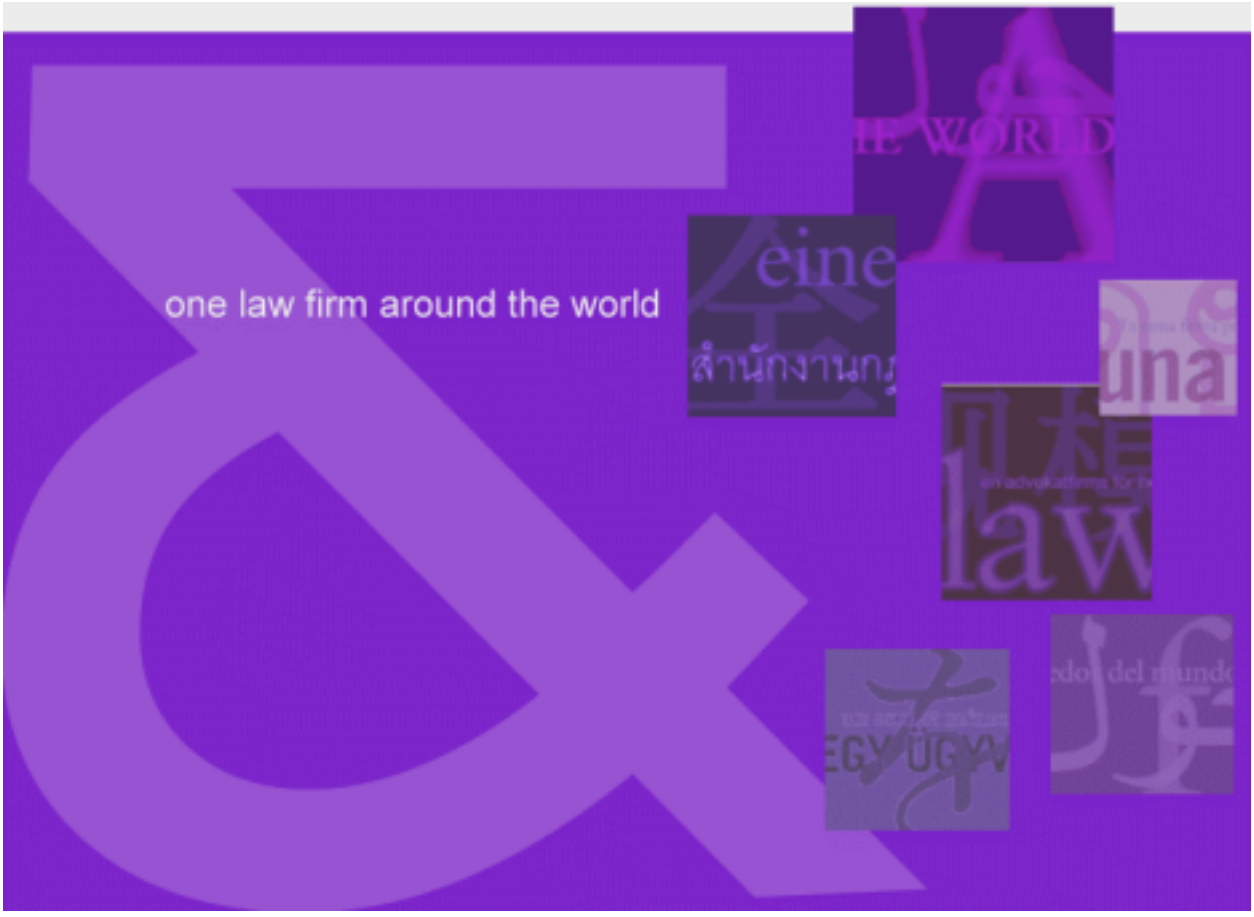

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice.

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The Office of the United States Trade Representative ("USTR") has been under intense pressure by Congress and industry to file the complaint, but refrained from doing so due to U.S. government efforts to build support for the war in Iraq. In recent weeks, the USTR has built a coalition against the EU, and managed to gain support among other biotechnology producing countries including Argentina, Canada and Egypt, who will join as co-complainants. In addition, nine other countries[1] agreed to join the WTO dispute as third parties, and are expected to support U.S. claims.

The EU has criticized the U.S. complaint, and insists that the dispute is unnecessary since it expects to approve new regulations on labeling and traceability of biotech products by June at the earliest, or in the autumn. Once the EU regulations are in place, the EU intends to lift the moratorium. This would be before the findings of a WTO dispute would be released. The US argues that the dispute is against the moratorium and not the new EU regulations, and insists on using the WTO dispute as leverage to facilitate export of its biotech products.

Panel on "US Trade Remedies and the WTO: Is Trade Law Reform in our Future?"

A panel discussion in Washington on May 1, 2003 sponsored by Consumers for World Trade, discussed the prospects for WTO antidumping reform. Speakers made the following comments, as highlighted below:

- ***Mike Castellano, Ways & Means*** – Described the low level of support in Congress towards the WTO dispute settlement mechanism. Noted that WTO rules reform do not have a major effect on the overall agenda, at least for now.

[1] The nine countries are Australia, Chile, Colombia, El Salvador, Honduras, Mexico, New Zealand, Peru and Uruguay. Other countries (supporting or opposing the EU) can request to join the dispute at a later stage.

- ***Petros Sourmelis, EC delegation*** – Emphasized the need for US compliance with WTO findings. Suggested negotiations as a means to pursue reform.

- ***John Magnus, Dewey Ballentine*** – Criticized WTO findings, and lack of logic in the WTO regarding determination of actual injury.

- ***Lew Liebowitz, Hogan and Hartson*** – Suggested pursuing trade remedy reform through WTO negotiations.

Representatives Crane and Rangel Propose Repeal of ETI; EU Seeks WTO Authority to Retaliate Against the US

On April 11, 2003, representatives Phil Crane (R-Illinois) and Charles Rangel (D-New York), both of whom are senior members of the House Ways and Means Committee, introduced legislation that would repeal the Extraterritorial Income Exclusion Act ("ETI" formerly "FSC") in order to comply with WTO findings. The proposed Job Protection Act of 2003 (H.R. 1769) would replace the ETI with a new deduction that favors companies with domestic production income. The proposed deduction is somewhat controversial as it could penalize companies with production abroad. A competing bill is expected soon from Ways and Means Committee Chairman Bill Thomas (R-California), who intends to modify a bill he introduced in the last Congress.

Meanwhile, the European Communities ("EC") on April 24, 2003, notified the WTO that it intends to seek approval for a final retaliation list against U.S. products. The EC's retaliation list includes agricultural goods, leather, wood and paper, apparel and clothing, glass, iron and steel, machinery, toys and other products. The EC would impose retaliatory tariffs of 100 percent for up to $4.03 billion in bilateral trade unless the ETI is brought into compliance. The WTO is expected to authorize EC retaliation on May 7, 2003.

Senator Baucus Proposes Commission to Review WTO Decisions

Senator Max Baucus of the Finance Committee (D-Montana) on March 20, 2003, introduced legislation proposing to establish a five-member commission ("Baucus Commission" or "Commission") to review WTO dispute findings against the United States. Baucus has been critical of recent WTO findings, and asserts that an independent commission is necessary to assess whether WTO dispute bodies are correctly interpreting WTO rules. Baucus believes the Commission would benefit both critics and supporters of the WTO by providing a fair and non-binding assessment of WTO dispute findings. Critics of the commission believe that an independent review body would complicate U.S. compliance with WTO findings, and could undermine the WTO system.

U.S. Trade Developments

Both Democrats and Republicans Express Concerns with Singapore and Chile FTAs, while USTR Officials Maintain Strong Support for the Agreements

The Commerce, Trade, and Consumer Protection Subcommittee of the House Energy and Commerce Committee on May 8, 2003 held a hearing to discuss the services and e-commerce provisions in the Free Trade Agreements (FTAs), which the United States has recently concluded with Chile and Singapore. Despite the narrow intended topic of the hearing, Members used the hearing as an opportunity to make the Administration aware of a variety of concerns about international trade policy.

Both Democratic and Republican Members expressed concerns with the two agreements. Subcommittee Democrats were particularly critical of the labor and environmental provisions in the agreements as well as the inclusion of two Indonesian islands in the agreement.

Some analysts speculate that yesterday's hearing could signal the hurdles the Administration will face when Congress debates and votes on the implementing language for the two agreements. Analysts have long suspected that Congressional debate on the FTAs could be as contentious and time-consuming as debate on Trade Promotion Authority (TPA).

USTR Releases 2003 "Special 301" Report on Status of Global Intellectual Property Protection

On May 1, 2003, the United States Trade Representative (USTR) released the annual "Special 301" report, detailing the adequacy and efficacy of intellectual property (IP) protection in 74 countries. "Special 301," shorthand for Section 182 of the Trade Act of 1974, continues to monitor the status of intellectual property rights (IPR) abroad, categorizing and summarizing the IP shortcomings of countries whose policies are held to result in inequitable market access for U.S. products and patent holders.

The USTR continues to divide the majority of such countries into three categories: "Priority Foreign Countries," "Priority Watch List Countries," and "Watch List Countries." Only the most flagrant offenders are categorized as Priority Foreign Countries. In the 2003 Special 301 Report, only Ukraine was so designated. In 2003, 11 countries were designated Priority Watch List Countries, including Argentina and Brazil. The USTR placed 36 countries on the less egregious 2003 Watch List, including Chile and Mexico; Mexico had not appeared on the Watch List since 1999.

The final category employed is "Section 306 Countries," composed of countries with IPR status that will be closely monitored, and which are subject to prompt trade sanctions if IPR enforcement fails to meet the criteria set forth in applicable bilateral agreements. China and Paraguay were the two countries placed into Section 306 in the 2003 report.

The primary emphasis of the 2003 report was to decry what the USTR described as a "global scourge" of growing piracy and counterfeiting issues, especially in the realm of CDs, DVDs, and other optical media products. Secondary emphases included Internet piracy issues, foreign government use of illegal software, and health policy concerns, including the USTR's defense of the right of drug developers to enjoy a period of exclusivity with their costly pharmaceutical research data.

USTR Identifies "Section 1377" Barriers to the Effectiveness of U.S. Telecommunications Trade Agreements

The United States Trade Representative (USTR) recently released its annual review of the operation and effectiveness of U.S. telecommunications trade agreements under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 3106). USTR acknowledges progress in many countries but is continuing to monitor and engage U.S. trade partners on an ongoing basis.

USTR identified a number of country-specific issues as well as three broader trade and regulatory concerns including: (1) high rates for connecting calls to mobile and fixed-line networks in foreign markets; (2) lack of reasonable access to leased lines; and (3) the absence of independent, effective regulators able to tackle these and other issues that otherwise might impede competition in foreign markets.

WTO Negotiations

WTO Members Miss Major Deadlines, But Negotiations Not in a State of Crisis

Since the beginning of 2003, WTO Members have experienced major difficulties in negotiating the Doha Development Agenda and have failed to reach key deadlines. In particular, the outstanding deadlines left over from 2002 (*i.e.* Public Health Decision and special and differential treatment) remain unresolved, and yesterday's failure to agree on modalities for the negotiations on agriculture, though it had been expected, will have repercussions in other areas of the Doha agenda and in the preparations for the Ministerial Conference at Cancun in September.

In these circumstances it would be easy to paint a pessimistic picture of impending crisis at Cancun and failure in the Doha Round itself, but that would be misleading. Despite the well-publicized disagreements and missed deadlines, much useful technical work is being done in many areas including agriculture, services, industrial goods and rules negotiations. Moreover, greater progress has been made in this Round than at comparable stages of the Tokyo and Uruguay Rounds.

US Releases Publicly its WTO Services Offer; WTO GATS Negotiations Move Forward

On March 31, 2003, the United States Trade Representative (USTR) released publicly the U.S. services offers in the context of ongoing WTO negotiations to expand coverage of the GATS. The U.S. offers were made in consultation with domestic stakeholders, including Congress, trade advisory groups, and various local and state representatives. The U.S. offers include the following services sectors, among others: insurance; banking and other financial services; telecommunications and information services; express delivery; environmental services; and energy services.

Due to what USTR characterizes as "false assertions sometimes raised by opponents of trade," USTR clarified that the United States shall not negotiate services commitments in public services, including: government monopoly service suppliers (*e.g.*, water authorities); government programs targeted towards U.S. or minority citizens; and the autonomy of U.S. educations institutions.

In addition, ten WTO Members have met the initial deadline of March 31, 2003 for the tabling of offers for market access liberalization in services. More offers are expect soon, including from the EU among others.

WTO Members also achieved progress during the March "Services Week" of negotiations on the methodology for autonomous liberalization, but the deadlock persists on developing an emergency safeguards mechanism. In addition, many WTO Members issued a statement advocating liberalization of maritime services, intended to pressure the US which has been resistant to these negotiations.

WTO Members Fail to Meet Deadline on Agriculture Modalities; Revised Harbinson Draft on Modalities Does Not Break Deadlock

On March 31, 2003, WTO Members failed to agree on modalities for agriculture negotiations by the mandated deadline of the Doha agenda. Members were unable to narrow their differences despite intensive consultations in the final weeks and a revised draft on modalities circulated by Stuart Harbinson, Chairman of the Negotiating Group on Agriculture. Harbinson's "revised" draft circulated on March 18 (he did not call it a "second draft") differed little from the original (circulated February 12), apart from some minor changes designed to benefit developing countries. Members criticized Harbinson's revised draft in similar terms to the original.

Due to the lack of agreement, Members at the March 31 meeting of the Committee on Agriculture agreed to submit to the Trade Negotiations Committee on April 4 a work program for the months leading up to the Cancun Ministerial in September. Thus, work on agriculture will continue in an effort to reach modalities, but is unlikely to conclude until Cancun.

Agriculture is the highest priority issue for most developing and other countries. The WTO's inability to meet this key deadline on agriculture, though it had been expected, will have repercussions in other areas of the Doha agenda.

First Harbinson Draft on Agriculture Modalities Moves Debate Forward at the WTO; Provokes Dissatisfaction Among Reformists and Opponents

Stuart Harbinson, Chairman of the Negotiating Group on Agriculture on February 12, 2003 circulated a first draft of modalities to the Special Session of the Committee on Agriculture (COA) in an attempt to conclude modalities by the deadline of March 31. The "Harbinson draft" was timed to move negotiations forward at the Tokyo Mini-ministerial (February 14-16, *Please see related report*) and reflects a balanced, but controversial approach to liberalization in this sensitive sector. Prior to this, Harbinson circulated on December 18, 2002 an overview paper summarizing Members proposals to date.

The Harbinson draft proposes liberalization targets and disciplines for the "three pillars" of negotiation and places special attention to developing country concerns:

- ***Market access*** – Formulas for tariff reduction; expansion of tariff rate quotas; but little mention of non-trade concerns.

- ***Export competition*** – Gradual elimination of export subsidies; stronger disciplines on state-trading enterprises, export credits and food aid.

- ***Domestic support*** – Reductions in domestic support (e.g. green, blue and amber box subsidies) and de minimis support.

- ***Developing country provisions*** – More flexible provisions on tariff reductions and subidy programs; safeguard mechanism; and new proposal on "Strategic Products."

WTO Members debated the Harbinson draft at the COA on February 24-28, but showed no signs of agreement on modalities. The major reformists (e.g. Cairns Group and US) and opponents (e.g. EC and Japan) to liberalization and their constituents have criticized the draft as either having gone too far, or not far enough. Harbinson expects to table a revised draft on modalities by mid-March, and Members will attempt to reach an agreement (however unlikely) at the next COA on March 25-31.

WTO Members Step Up Negotiations on Industrial Market Access; Differences on Environmental Goods More Apparent

The Negotiating Group on Market Access at its recent meeting on February 19-21, 2003, stepped up their discussion of modalities for market access on non-agricultural products. Members at the latest session reviewed two overview papers and new proposals from Thailand and a group of African countries. Members are striving to reach a "common understanding" on a possible outline for negotiating modalities by March 31, and to conclude modalities by May 31, 2003.

Concerning market access for environmental goods, a statement dated February 14 by the WTO Secretariat highlights the divide between Members on the issue. The Director of the WTO's Market Access Division Carmen Luz Guarda recently commented that two opposing camps have formed on the issue of environment goods, in the context of (i) treatment; (ii) definition; and (iii)

potential beneficiaries from liberalization. Nevertheless, a recent submission by Qatar is viewed as helpful to move the process forward.

The debate on environmental goods is seen as driven by developed country Members, who are viewed as the main beneficiaries of liberalization in products with relatively high technological content. Developing countries, many whose priority is to achieve meaningful liberalization in agriculture, will likely hold up progress in environmental and industrial goods negotiations without parity in agriculture (modalities deadline by March 31, 2003).

Regional Trade Agreements

US and Singapore Sign FTA; ITC Holds Hearing on Economic Effects of FTA

President Bush and the Prime Minster of Singapore on May 6, 2003 signed the U.S.-Singapore FTA. Congress still needs to approve implementing legislation.

On April 24, 2003, the International Trade Commission (ITC) held a public hearing on the U.S.-Singapore FTA. The hearing aimed to assess the likely impact of the agreement on the U.S. economy as a whole and on specific sectors, and the interests of U.S. consumers.

Eleven representatives testified at the hearing. Most representatives stated that the FTA serves as a precedent for future negotiations in the Asia Pacific region and praised the groundbreaking chapters on Intellectual Property Rights (IPR), market access for services, and e-commerce.

USTR Releases Full Text of U.S.-Chile FTA; ITC Announces Public Hearing on Economy-wide and Sectoral Effects of U.S.-Chile FTA

We want to alert you to the following developments:

- USTR Releases Full Text of U.S.-Chile FTA
- ITC Announces Public Hearing on Economywide and Sectoral Effects of U.S.-Chile FTA

Chile and Singapore FTAs Set Important Precedents for Future FTAs

On April 28, 2003, the U.S. Chamber of Commerce and the Latin America/Caribbean and Asia/Pacific Economics and Business Association co-hosted a discussion on the U.S.-Chile and U.S.-Singapore Free Trade Agreements (FTAs).

Speakers agreed that the key benefit of both agreements for the U.S. is that they spread the idea of free trade in the region and motivate other countries to pursue FTAs with the U.S. The speakers also characterized the Chile and Singapore FTAs as “groundbreaking,” with several chapters that should serve as precedents for future agreements.

Comments Focus on Negative Employment Effect of U.S.-Morocco and U.S.-Central America FTAs

On March 28, 2003, the United States Trade Representative (USTR) received comments on the employment impact of the U.S.-Morocco Free Trade Agreement (FTA), as requested on February 7, 2003 (68 FR 6529). Only a few associations submitted comments and they generally agreed that the FTA would negatively affect employment in their respective industries.

On April 25, 2003, the USTR received comments on the employment impact of the U.S.-Central America FTA (CAFTA), as requested on March 19, 2003 (68 FR 13358). Comments indicate that an FTA based on NAFTA would have a negative impact on U.S. employment. Some comments note that CAFTA should not contain restrictions on duty drawback.

The USTR has requested comments on the employment impact of the U.S.-Southern African Customs Union (SACU) FTA (68 FR 24532) and the U.S.-Australia FTA (68 FR 24785).

REPORTS IN DETAIL

U.S. PERSPECTIVES ON THE WTO

US Initiates Controversial WTO Dispute Against EU Moratorium on GMO Approval

SUMMARY

On May 13, 2003, the United States initiated a formal WTO complaint against the European Communities in the long-running dispute against the European Union's moratorium on agriculture biotechnology goods (in effect since October 1998), including those for planting or consumer use (*i.e.*, genetically modified organisms or "GMOs"). The US claims it has resulted in lost exports of at least $300 million annually, and undermines the use of biotechnology globally.

The Office of the United States Trade Representative ("USTR") has been under intense pressure by Congress and industry to file the complaint, but refrained from doing so due to U.S. government efforts to build support for the war in Iraq. In recent weeks, the USTR has built a coalition against the EU, and managed to gain support among other biotechnology producing countries including Argentina, Canada and Egypt, who will join as co-complainants. In addition, nine other countries[2] agreed to join the WTO dispute as third parties, and are expected to support U.S. claims.

The EU has criticized the U.S. complaint, and insists that the dispute is unnecessary since it expects to approve new regulations on labeling and traceability of biotech products by June at the earliest, or in the autumn. Once the EU regulations are in place, the EU intends to lift the moratorium. This would be before the findings of a WTO dispute would be released. The US argues that the dispute is against the moratorium and not the new EU regulations, and insists on using the WTO dispute as leverage to facilitate export of its biotech products.

ANALYSIS

I. Background on the GMO Dispute

In October 1998, the EU, under pressure from its Member States and consumers[3], refrained from approving new agriculture biotech products for planting or sale. The EU's *de*

[2] The nine countries are Australia, Chile, Colombia, El Salvador, Honduras, Mexico, New Zealand, Peru and Uruguay. Other countries (supporting or opposing the EU) can request to join the dispute at a later stage.

facto moratorium does not affect previously-approved GMO products (approximately nine plant varieties including certain corn and soy varieties), but has prevented approval of approximately a dozen plant varieties. The Member States most resistant to biotech products include France, Germany, Austria, Greece, Italy and Luxemburg – which all imposed bans on modified crops approved by the EU. The European Commission has not challenged these bans.

The EU insists that the moratorium remain in place until it implements a regulatory system of labeling and traceability to monitor the crops. The EU Parliament expects to vote on the Commission's proposal by June 2003 at the earliest, or later in the autumn. Thus, the EU argues that the U.S. WTO complaint is unnecessary.

The US and other biotech producing countries have expressed frustration with the EU's moratorium. They argue that the moratorium violates WTO disciplines prohibiting imposition of sanitary and phytosanitary measures without a demonstration of scientific evidence of risk. They also note that developing countries have resisted biotech products because of the EU's questionable concerns. For example, Zambia in August 2002 rejected U.S. food aid because it included genetically modified grain. Developing countries also resist cultivation of biotech products for fear that their exports to the EU (the largest market in the world for developing country products) will be resisted if they contain bio-engineered crops.

The US is the world's largest producer of biotech crops, with 39 million hectares under cultivation in 2002, or about two-thirds of global production. Leading biotech crops include corn, soybeans and cotton. As much as 34 percent of the U.S. corn crop and 75 percent of its soybeans are grown with genetically modified seed to enhance yield and resist pests. The US claims that the EU ban has resulted in lost exports of about $300 million annually (especially corn products).

Global biotechnology cultivation has grown significantly since the mid-1990s. In 1996 1.7 million hectares were under cultivation in six countries. In 2002, 58.7 million hectares were under cultivation in 16 countries. The largest producers are the US, Argentina, Canada and China in that order. Last year, new producers included India, Colombia, Honduras and the Philippines.

II. The U.S. Complaint Against the EU on the GMO Moratorium

After intense pressure from Congress and U.S. industry, on May 13, 2003, USTR Robert Zoellick and Agriculture Secretary Ann Veneman announced that the US, along with Argentina, Canada, and Egypt, would file a formal WTO complaint against the EU moratorium. The U.S. officials also indicated that nine other countries would support the complaint by joining it as third parties: Australia, Chile, Colombia, El Salvador, Honduras, Mexico, New Zealand, Peru and Uruguay. (Observers note that coincidentally, many of these countries are involved in U.S. bilateral and regional trade initiatives, or seek launch of new trade initiatives.)

[3] The market research group Eurobarometer in a 2002 poll estimates that 44 percent of European consumers believe that GMO foods are less safe than other foods. About 28 percent believe they are safe, and 27 percent remain undecided.

USTR Zoellick asserted that the EU's moratorium is inconsistent with WTO rules including the Agreement on Sanitary and Phytosanitary Standards ("SPS Agreement"), the Agreement on Technical Barriers to Trade ("TBT Agreement"), the Agriculture Agreement and GATT 1994. Zoellick stated that the moratorium is unjustified even by the EU's own scientific analysis. According to Zoellick, the EU's internal scientific studies have not produced adequate risk assessments that biotech products are harmful to human health or the environment. Zoellick also argued that numerous organizations, researchers and scientists have determined that biotech foods pose no threat to human health or the environment. Among these groups are the French Academy of Medicine and Pharmacy, the French Academy of Sciences, and 3,200 scientists who cosponsored a declaration on biotech foods.

WTO agreements directly address the issue of scientific evidence for the moratorium. The SPS Agreement, for example, recognizes that countries are entitled to regulate food products to protect human health and the environment[4], but requires that measures imposed to carry out these non-trade objectives be based on "sufficient scientific evidence"[5] and that approval procedures are carried out without "undue delay."[6] Otherwise, countries might impose SPS measures that are not based on a proper assessment of risk and which function as disguised barriers to trade.

The US and complaining countries intend to file their request for consultations soon,[7] thereby triggering a period of negotiations with the EU that will last for at least 60 days. After mid-July, the parties can request the establishment of a WTO panel if the consultations do not produce a solution to the problem. WTO dispute panels typically render their decisions in nine months, and parties can appeal the decision. Given the complex dispute resolution process, implementation of dispute findings often requires 18 months or more.

[4] *See generally* Article 2 of the SPS Agreement.

[5] *See generally* Article 5 of the SPS Agreement.

[6] *See* Annex C(1)(a) of the SPS Agreement.

[7] The US on May 13, 2003 submitted its Request for Consultations to the EU and will file it before the WTO (expected this week).

III. U.S. Request for Consultations

The U.S. request for consultations cites the relevant EU regulations and three EU actions that allegedly violate the WTO's SPS Agreement, the TBT Agreement, the Agriculture Agreement and GATT 1994. The request also includes three annexes citing the status of applications (notifications and requests under the relevant EU regulations[8]), and the actions of Member States including national marketing and import bans on biotech products.

The U.S. request cites three EU actions that allegedly violate the WTO Agreements:

(1) De facto moratorium: Suspensions of consideration of applications for, or granting of,approval of biotech products;

(2) Failure to act on pending applications: Failure by the EC to consider for approval applications for biotech products mentioned in Annexes 1A and 1B; and

(3) Marketing and import bans: National marketing and import bans maintained by certain EU Members States, as described in Annex II.

The U.S. request cites 24 pending applications for approval under EU Directive 2001/18 (90/220). The U.S. request also cites 11 pending applications for approval under EU regulation 258/97 for "Novel Foods.

OUTLOOK

The EU has argued that the U.S. complaint is unnecessary since the EU intends to lift the moratorium in the next several months. Even the EU Member States most resistant to biotech products, such as France and Germany, are apparently willing to lift the moratorium after the Commission's proposed draft legislation on traceability and labeling of GMOs enters into force. The Council of Ministers agreed in March 2003 upon a common position on the Commission's proposed regulation concerning the traceability and labeling of GMO products as well as feed and food products produced from GMOs. This regulation will establish a framework for the traceability of products consisting of, or containing, GMOs in order to facilitate their accurate labeling and the monitoring of the effects on the environment and human health. The common position will be forwarded to the European Parliament for a second reading. The Parliament is expected to vote on the common position in June, or by the autumn.

The US and complaining parties are confident that the WTO will rule in their favor due to the EU's lack of scientific evidence that biotech products are harmful to human health and the

[8] Directive 200/18, O.J. L 106 17.4.2001, p. 1 (and its predecessor, Directive 90/220, O.J. L 117, 8.5.1990, p.15, as amended by Directive 94/15, O.J. L 103, 22.4.1994, p. 20 and Directive 97/35, O.J. L 169, 27.6.1997, p.72); and Regulations 258/97, O.J. L 043, 14.2.1997, p.1.

environment. The parties insist on pressuring the EU for fear that the decision to lift the moratorium will be delayed. The parties seek to gain leverage against the EU in the event the new EU regulations continue to act as barriers to biotech exports. The EU has warned the complaint could backfire, and provoke stronger consumer reaction against biotechnology. The backlash could stall efforts to lift the moratorium despite new regulations on labeling and traceability.

The U.S. motive for raising the dispute appears to extend beyond biotechnology, and seeks to discourage the EU and other countries from implementing health and safety regulations that act as disguised barriers to trade. For example, the EC is considering a controversial proposal to register and test up to 30,000 chemicals. In these matters, the US and EU generally conflict over interpretation of the "precautionary principle" (presumed risk without adequate scientific evidence) – and whether it provides an appropriate basis to restrict trade.

The latest trans-Atlantic dispute is likely to increase strains resulting from the Iraq war and difficult bilateral disputes at the WTO. For example, the EU last week announced its intention to retaliate by the end of the year against the US for up to $4 billion in annual trade if the US does not comply with WTO findings against the U.S. foreign sales/extraterritorial income regime. Thus, the EU has considerable leverage in the trade disputes that have nagged the trans-Atlantic relationship.

From a broader perspective, the latest high-profile dispute before the WTO could further erode public support for the institution, and WTO Members' efforts to achieve a successful outcome at the Cancun Ministerial Conference in September 2003. The further resort among Members to litigation vs. negotiation is not necessarily a healthy outcome, especially for delicate matters of public safety.

Panel on "US Trade Remedies and the WTO: Is Trade Law Reform in our Future?"

SUMMARY

A panel discussion in Washington on May 1, 2003 sponsored by Consumers for World Trade, discussed the prospects for WTO antidumping reform. Speakers made the following comments, as highlighted below:

- ***Mike Castellano, Ways & Means*** – Described the low level of support in Congress towards the WTO dispute settlement mechanism. Noted that WTO rules reform do not have a major effect on the overall agenda, at least for now.

- ***Petros Sourmelis, EC delegation*** – Emphasized the need for US compliance with WTO findings. Suggested negotiations as a means to pursue reform.

- ***John Magnus, Dewey Ballentine*** – Criticized WTO findings, and lack of logic in the WTO regarding determination of actual injury.

- ***Lew Liebowitz, Hogan and Hartson*** – Suggested pursuing trade remedy reform through WTO negotiations.

ANALYSIS

I. Michael Castellano, House Ways and Means Committee (and Congressman Sander Levin)

Michael Castellano, Trade Counsel to the House Ways and Means Committee (and Congressman Sander Levin) commented on the WTO negotiations on trade remedies and dispute settlement, and the mood in Congress towards implementation of WTO disputes.

Castellano stated that WTO rules negotiations, at least at this stage, are not seen as affecting the momentum of overall Doha negotiations. He stated that no WTO Member is threatening to block progress because of WTO rules reform. Rather, the current focus of the negotiations remains on agriculture. He added that it is not entirely clear if the countries favoring reform of the Agreements on Antidumping (Article VI of the GATT 1994, "AD Agreement") and Subsidies and Countervailing Measures ("SCM Agreement") will actually demand a decision to move into the actual negotiating phase at Cancun. Ministers will address the rules issue at Cancun, but what is uncertain is the nature of how they will do so. He also commented that the US has a far more open economy than that of some of the "Friends of Antidumping" – which seeks stronger disciplines on AD measures, including Japan and Korea.

Castelleno stated that reform of the WTO's dispute settlement mechanism would be a crucial aspect of the negotiations. He lamented, however, that proposals for Dispute Settlement Understanding ("DSU") reform from the USTR have not been very aggressive.

Castellano described the current support for the WTO Dispute Settlement Body ("DSB") in the US Congress as being at a very low level. He cited concern among Members of Congress with regard to several aspects of dispute settlement proceedings, including that current members of the Appellate Body have no background in AD/CVD cases. It is noteworthy that, as provided under Article 3.2 and Article 19.2 of the DSU, recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements. There is a feeling in Congress that WTO panels and the Appellate Body have overstepped their authority in dispute findings in ruling against U.S. administrative procedures.

II. Petros Sourmelis, Delegation of the European Commission in Washington

Petros Sourmelis, head of the EC's trade delegation in Washington, commented that although WTO bodies have ruled against the US, there is no deliberate anti-US stance in the WTO. The ruling on the Byrd Amendment for instance, would certainly not circumscribe the sovereignty of the US. The US would only be required to respect an obligation, which all WTO Members have voluntarily agreed to. He stated that WTO Panels had condemned various methodologies used by US investigating authorities in trade remedy cases. Given that the US had used the same methodologies again in other cases, it came as no surprise that WTO Panels presiding over those cases had reached the same conclusion. Sourmelis also pointed out that the share of developing country users of trade remedy measures is increasing and with more frequent recourse to the use of safeguards. Thus, it is important for the US, EC and others to demonstrate leadership in the WTO by complying with dispute findings.

Sourmelis posed the questions how can the situation be addressed and how should the US respond to the rulings against it? He remarked that the US has no choice but to comply with the DSB rulings and to bring its legislation into conformity with WTO rules. Simply ignoring the rulings is not an option.

Sourmelis noted that in the context of the on-going negotiations on trade remedies, the US could bring to the table areas where it seeks reform. The WTO rules negotiations, however, should be seen as an additional step and not as a substitute for compliance with WTO rulings.

III. John Magnus, Dewey Ballantine LLP

John Magnus, partner at the law firm of Dewey Ballantine (a frequent petitioner counsel on behalf of U.S. domestic interests) described two sources of pressure on U.S. trade remedy rules:

(i) DSB findings against the US; and

(ii) On-going WTO negotiations on trade remedy rules.

Magnus noted that the trade agreements that the US negotiates have no direct legal effect in the absence of corresponding implementing legislation.

Magnus cited several problems with WTO dispute proceedings:

For example, WTO panels have issued rulings without delving into the volume of trade affected by the remedy measure in question. Moreover, the complaining party does not need to demonstrate injury until the matter is taken to a compliance panel. Therefore it is only after the "reasonable period of time" expires and the complaining country proposes to suspend "x" amount of concessions and the defending party disagrees – that the compliance panel examines the situation. On certain occasions, trade is not being affected. This was the case in the 1916 Dumping Act, Byrd Amendment, and other rulings. In the 1916 Act, upon expiry of the reasonable period of time, Japan requested the imposition of "mirror legislation".

Commenting on structural problems in WTO dispute settlement, Magnus pointed out that WTO secretariat officials who are staffing the negotiating functions of the WTO simultaneously staff the Panels. He also criticized proposals put forward by the "Friends of Antidumping" including a proposal for a "public interest test", which according to Magnus, would introduce a political level of review and uncertainty into the antidumping process.

Magnus then posed the question of what is the proper role of the WTO? He remarked that the DSB's role is to hold WTO Members accountable when they renege on what they specifically promised not to do. It does not create additional obligations that were not agreed by the negotiators.

IV. Lewis E. Leibowitz, Hogan & Hartson LLP

Lew Leibowitz, partner at the law firm of Hogan & Hartson (and a frequent respondent counsel on behalf of foreign industries) acknowledged that the WTO system is not perfect. He suggested reform of the system should be pursued through negotiations.

Leibowitz cited two provisions in particular – the "lesser-duty rule" and the "public interest" test as being used by many countries. He asked why these are so bad for the US?

John Magnus commented that to the extent that it is always in the public interest to impose a duty in an antidumping case, the public interest test is redundant. That is already being said upfront.

OUTLOOK

Speakers on the panel generally agreed on the need for some level of reform of the WTO Agreements on Antidumping and dispute settlement (DSU), but did not discuss many specific options. Members of Congress and counsel to domestic industries, including Magnus, oppose any weakening of antidumping disciplines. On the other hand, most WTO Members including the EC, are more open to reform of trade remedy rules than the US.

Representatives Crane and Rangel Propose Repeal of ETI; EU Seeks WTO Authority to Retaliate Against the US

SUMMARY

On April 11, 2003, representatives Phil Crane (R-Illinois) and Charles Rangel (D-New York), both of whom are senior members of the House Ways and Means Committee, introduced legislation that would repeal the Extraterritorial Income Exclusion Act ("ETI" formerly "FSC") in order to comply with WTO findings. The proposed Job Protection Act of 2003 (H.R. 1769) would replace the ETI with a new deduction that favors companies with domestic production income. The proposed deduction is somewhat controversial as it could penalize companies with production abroad. A competing bill is expected soon from Ways and Means Committee Chairman Bill Thomas (R-California), who intends to modify a bill he introduced in the last Congress.

Meanwhile, the European Communities ("EC") on April 24, 2003, notified the WTO that it intends to seek approval for a final retaliation list against U.S. products. The EC's retaliation list includes agricultural goods, leather, wood and paper, apparel and clothing, glass, iron and steel, machinery, toys and other products. The EC would impose retaliatory tariffs of 100 percent for up to $4.03 billion in bilateral trade unless the ETI is brought into compliance. The WTO is expected to authorize EC retaliation on May 7, 2003.

ANALYSIS

I. Crane and Rangel Propose Repeal of ETI

On April 11, 2003, representatives Phil Crane and Charles Rangel introduced legislation that would repeal the Extraterritorial Income Exclusion Act ("ETI"), replacing it with a new deduction for companies with domestic production income. The proposed Job Protection Act of 2003 (H.R. 1769) responds to WTO rulings against the ETI (and its predecessor the "FSC") as providing illegal export subsidies. Unless the ETI is brought into compliance with WTO rules, the EC might impose retaliation of over $4 billion in trade sanctions against U.S. products.

A. Proposed Tax Deduction Favors Domestic Production Activities

H.R. 1769 would provide a permanent new deduction for manufacturers to reduce the effective corporate tax rate applicable to a company's taxable income attributable to "U.S. production activities." U.S. production activities would be defined as the manufacture, production, growth, or extraction of property eligible for the current FSC/ETI benefit. It would make no difference if the products were actually exported or not. Thus, there is a greater emphasis on encouraging domestic manufacturing over some level of foreign manufacturing. Some argue that this credit would penalize U.S. companies with manufacturing operations abroad, and would reduce production efficiency and competitiveness of U.S. companies that manufacture domestically and overseas.

B. Calculation and Estimated Cost of Tax Credits

The bill proposes to calculate taxable income based on U.S. production activities, and would require a company to compute the total gross receipts from the sale, rental or license of eligible property produced in whole or part by the taxpayer in the U.S. The company would then subtract from this figure inventory costs, directly allocated deductions, and a pro rata portion of other deductions. The allocation of the deduction would be similar to the method used for allocation of U.S. and foreign source income.

For companies that produce entirely within the U.S., the effective rate reduction is greater than for companies with some production overseas, and amounts to 3.5 points once fully phased-in. For companies with domestic and foreign production facilities, the deduction will be calculated by a sliding-scale effective rate reduction based on the value of U.S. production of eligible products compared to the value of their worldwide production.

The Joint Committee on Taxation (JCT) in April issued a cost estimate for H.R. 1769, predicting the bill would over 10 years cost roughly $126 million more in loss revenues than the ETI. The ETI alone amounts to about $5 billion in lost revenues each year. The Crane-Rangel bill would probably appeal to many current ETI beneficiaries since it would provide an equivalent amount of tax exemptions.

II. EU Seeks WTO Authority to Retaliate Against US

The EC on April 24, 2003, stepped up pressure on the US to comply in the FSC/ETI dispute by notifying the WTO of a final retaliation list against U.S. products[9] *(Please see attached document.)* At the next Dispute Settlement Body meeting on May 7, 2003, the EC will seek approval for the list for which it can retaliate up to US$4.043 billion annually. The EC request is in accordance to Article 22.7 procedures under the Dispute Settlement Understanding ("DSU"), and taken after it circulated an indicative retaliation list on November 17, 2000.

The EC intends to retaliate by imposing additional duties of up to 100 percent for products listed in its recent communication to the WTO. Products include agricultural goods, leather, wood and paper, apparel and clothing, glass, iron and steel, machinery, toys and other goods. Once authorized by the DSB, the EC can retaliate immediately and up to US$4.043 billion annually, for those products (any or all) listed in the final retaliation list. The EC is not authorized to retaliate against additional products not on the list, but can modify the level of retaliation for products already on the list.

The DSB is expected to approve the retaliation list as a formality. Thus, after May 7, 2003, the EC can invoke the right to retaliate against the US, for as long as the US remains in non-compliance with WTO rulings.

[9] WT/DS108/26, United States – Tax Treatment for Foreign Sales Corporations: Recourse by the European Communities to Article 4.10 of the SCM Agreement and Article 22.7 of the DSU, 25 April 2003.

OUTLOOK

The prospects for passing the Crane-Rangel bill remain uncertain in light of mixed initial reactions from the Administration, other Members of Congress and industry. The Administration, for example, has not embraced the proposal but has expressed concerns that the bill could raise serious problems if it disproportionately penalizes U.S. firms that manufacture abroad. Commerce Undersecretary for International Trade Grant Aldonas has warned that if the bill penalizes companies with foreign production facilities, it would be a "giant step backward." U.S. companies are also divided as those with limited manufacturing abroad favor the bill while those with mixed, or substantial production overseas oppose the methodology for tax deductions.

Within Congress, the Crane-Rangel bill will compete for support against an alternative solution offered by Ways and Means Committee Chairman Bill Thomas. In the last Congress, Rep. Thomas introduced a bill (H.R. 5095) that would have repealed the ETI in favor of nearly 20 separate international tax incentives, ranging from foreign tax credit reforms to changes in the interest allocation rules. (The bill also would have cracked down on corporate tax shelters, earnings stripping and corporate expatriation.) H.R. 5095 did not advance in the last Congress due in large part to opposition from corporations who asserted that the legislation would not fully account for the lost money arising from ETI repeal. Moreover, lawmakers from both parties on the Ways and Means Committee opposed the bill.

Rep. Thomas is expected to unveil a revised version of H.R. 5095 in the next few weeks. Thomas' revised bill is expected to again repeal ETI, and offer some number of international tax incentives. However, the revised bill might take a softer approach, allowing for more transitional relief on ETI repeal and a less stringent crackdown on earnings stripping. The bill is also expected to include an extension of the research and development ("R&D" tax credit, which is due to expire June 30, 2004.

At the present time, many lawmakers and corporate stakeholders are studying the Crane-Rangel bill and awaiting the revised Thomas bill. Despite the threat of pending EC retaliation, Congressional action on any legislative solution to the ETI still appears months off. In addition to the ETI, Congress is preoccupied by general tax cut legislation and other budget measures.

Next week, the EC will gain WTO approval to retaliate against the US. It remains unclear, however, whether the EC will retaliate soon after it is authorized to do so, and to what extent and amount it might retaliate. The EC could decide to retaliate at a limited level in order to pressure the U.S. Congress to expedite legislation. Nevertheless, any level of EC retaliation could backfire and discourage Congress from complying with WTO rulings on the ETI or other disputes. EC retaliation could also prompt the US to raise at the WTO the controversial dispute against the EU's delay in approval of genetically modified organisms ("GMOs"). Moreover, EC retaliation could alienate some Members of Congress in their support of the WTO as an institution.

Senator Baucus Proposes Commission to Review WTO Decisions

SUMMARY

Senator Max Baucus of the Finance Committee (D-Montana) on March 20, 2003, introduced legislation proposing to establish a five-member commission ("Baucus Commission" or "Commission") to review WTO dispute findings against the United States. Baucus has been critical of recent WTO findings, and asserts that an independent commission is necessary to assess whether WTO dispute bodies are correctly interpreting WTO rules. Baucus believes the Commission would benefit both critics and supporters of the WTO by providing a fair and non-binding assessment of WTO dispute findings. Critics of the commission believe that an independent review body would complicate U.S. compliance with WTO findings, and could undermine the WTO system.

ANALYSIS

I. Baucus Proposes Creation of Commission to Review WTO Dispute Findings

A. Baucus Critical of WTO Dispute Settlement System

On March 20, 2003, Senate Finance Committee Ranking Member Max Baucus (D-Montana) introduced legislation (S 676) that would establish the World Trade Organization Dispute Settlement Review Commission ("the Commission"), a five-member commission to review WTO dispute findings. Baucus, who has become an increasingly vocal critic of the WTO dispute settlement system, believes that the Commission is necessary to ensure that the United States is benefiting from the trade agreements it has negotiated. Baucus, in a statement on the Senate floor, argued that the WTO Dispute Settlement Body ("DSB") has made "several decisions recently that go well beyond the scope of their authority." Baucus was referring to the decisions against the so-called "Byrd Amendment", the FSC/ETI, U.S. steel safeguards, among others.

Baucus suggests that the United States is losing cases brought against it in the WTO because WTO dispute bodies are going beyond their standard of review. He asserts that WTO dispute bodies are both eroding U.S. trade laws and imposing new obligations on the United States, all "under the radar of Congress and the American public." Moreover, he argues that WTO dispute bodies are "flouting the rules" and thus "substituting their own judgment in place of carefully negotiated principles."

B. Scope and Functions of the "Baucus Commission"

The proposed "Baucus Commission" would examine ***adverse*** WTO rulings in cases brought against the United States. Upon the request of the United States Trade Representative (USTR) or the Chairman or Ranking Member of the House Ways and Means Committee or the Senate Finance Committee, the Commission would review any other ruling that the DSB adopts.

The President, in consultation with Congress, would create the Commission and appoint five retired Federal appellate judges to serve five-year terms. The Commission would review the WTO findings to determine whether WTO panels or the Appellate Body:

(i) Exceeded its authority or its terms of reference;

(ii) Added to the obligations, or diminished the rights of the United States under the WTO Agreement that is the subject of the report;

(iii) Acted arbitrarily or capriciously, engaged in misconduct, or demonstrably departed from the procedures specified for panels and Appellate Bodies in the applicable WTO Agreements; and

(iv) Deviated from the applicable standard of review, including in antidumping, countervailing
duty, and other unfair trade remedy cases set forth in Article 17.6 of the Antidumping Agreement.

If the Commission reaches an affirmative determination with regard to one of the four points above, the Commission must then determine whether the action of the DSB "materially affected" the outcome of the ruling. An affirmative determination requires the vote of a majority of the Commission. The Commission must report its findings to the House Ways and Means Committee and the Senate Finance Committee within 120 days of the date that the WTO ruling is adopted.

The legislation does not indicate whether the House or Senate committees must consider the Commission's findings.

C. Rationale for "Baucus Commission"

Baucus believes that the creation of such a Commission would increase the transparency of the WTO by allowing for open and fair examination of the WTO dispute process. Baucus believes that the Commission could benefit both supporters and critics of the WTO system:

- ***Win support for WTO*** – If the Commission were to find that dispute bodies are properly applying WTO rules in their findings, the Commission would help silence critics and possibly win new supporters for the WTO system.

- ***Vindicate critics*** – If the Commission were to find in certain cases that the WTO is acting beyond its mandate, the Commission would encourage Congressional oversight of WTO findings in order to remedy the situation expeditiously.

In addition to Baucus, the bill's co-sponsors are Senators Larry Craig (R-Idaho), Jay Rockefeller (D-West Virginia), and Evan Bayh (D-Indiana). Analysts note that Rockefeller and Craig are strong opponents of any weakening of U.S. trade remedy laws. In fact, Craig co-sponsored the so-called "Dayton-Craig amendment" to the Trade Promotion Authority bill along

with Senator Mark Dayton (D-Minnesota). The Dayton-Craig amendment would have allowed a majority of the United States Senate to amend portions of a trade agreement (*e.g.*, arising from WTO negotiations) that might affect U.S. trade remedy laws. The amendment ultimately was withdrawn in conference due to intense criticism *(Please see W&C August 2, 2002 Report)*.

OUTLOOK

The proposed "Baucus Commission" is controversial in that it would question select WTO findings (presumably only adverse findings against the US), and could make it more difficult for the US to comply with adverse WTO findings. Although the independent commission's findings are non-binding, if the commission challenges particular WTO findings – it would no doubt discourage some Members of Congress from supporting legislation to comply in these disputes. Supporters of the commission argue that an independent commission's recommendations, if supportive of WTO findings, would bolster support for compliance and the credibility of the WTO.

Perhaps a more constructive approach to achieving similar objectives of improving WTO transparency and objectiveness could be pursued through reform of the Dispute Settlement Understanding ("DSU"). The current deadline for DSU review is the end of May 2003, although this deadline is unlikely to be met. The US, for example, has proposed more open proceedings and allowing amicus briefs. Nevertheless, revision of the DSU will be modest and unlikely to satisfy certain Members of Congress.

Judging from the current negative sentiment in Congress as a result of recent findings against U.S. measures, it seems that Baucus will gain support in creating the Commission. At this early stage, the Administration and supporters of free trade have not taken a strong stand against the commission. Moreover, the proposed legislation will probably undergo some amendment in the event it is passed. Some skeptics of the WTO, however, are strong supporters of the Baucus Commission. Thus, there is concern that these critics intend to use the Commission as a domestic vehicle to criticize the multilateral process.

In any event, if other WTO Members follow the U.S. example of second guessing WTO findings, the WTO dispute settlement process would be undermined. In many cases, domestic institutions in WTO Members including "independent" review commissions would be more susceptible to bias in favor of domestic laws and procedures.

U.S. TRADE DEVELOPMENTS

Both Democrats and Republicans Express Concerns with Singapore and Chile FTAs, while USTR Officials Maintain Strong Support for the Agreements

SUMMARY

The Commerce, Trade, and Consumer Protection Subcommittee of the House Energy and Commerce Committee on May 8, 2003 held a hearing to discuss the services and e-commerce provisions in the Free Trade Agreements (FTAs), which the United States has recently concluded with Chile and Singapore. Despite the narrow intended topic of the hearing, Members used the hearing as an opportunity to make the Administration aware of a variety of concerns about international trade policy.

Both Democratic and Republican Members expressed concerns with the two agreements. Subcommittee Democrats were particularly critical of the labor and environmental provisions in the agreements as well as the inclusion of two Indonesian islands in the agreement.

Some analysts speculate that yesterday's hearing could signal the hurdles the Administration will face when Congress debates and votes on the implementing language for the two agreements. Analysts have long suspected that Congressional debate on the FTAs could be as contentious and time-consuming as debate on Trade Promotion Authority (TPA).

ANALYSIS

The Commerce, Trade, and Consumer Protection Subcommittee of the House Energy and Commerce Committee on May 8, 2003 held a hearing to discuss the services and e-commerce provisions in the Free Trade Agreements (FTAs), which the United States has recently concluded with Chile and Singapore. Despite the narrow intended topic of the hearing, Members raised a variety of issues, most prominently, concerns about labor and environmental standards as well as issues specific to how the agreements would affect their home districts. Subcommittee Democrats were particularly critical of the labor and environmental provisions in the agreements as well as the inclusion of two Indonesian islands in the agreement.

The Subcommittee heard testimony from Administration and industry witnesses:

- Ralph F. Ives, Assistant United States Trade Representative (USTR) for Asia-Pacific and APEC Affairs
- Regina K. Vargo, Assistant USTR for the Americas
- Michelle O'Neill, Deputy Assistant Secretary of Commerce for Information Technology Industries

- Robert W. Holleyman, President and Chief Executive Officer, Business Software Alliance

- Brian Kelly, Senior Vice President of Government Relations and Communications, Electronic Industries Alliance

- Ronald T. Monford, President and Chief Executive Officer, Mind Over Machines, Inc.

- Frank Vargo, Vice President, International Economic Affairs, National Association of Manufacturers

- Mark Bohannon, General Counsel and Senior Vice President of Public Policy, Software & Information Industry Association

- David Waskow, International Policy Analyst and Trade Policy Coordinator, Friends of the Earth

- Thea Lee, Chief International Economist, AFL-CIO

Stearns: Singapore and Chile FTAs Mark Significant Departure from Past Agreements

Subcommittee Chairman Cliff Stearns (R-Florida), who supports the agreements, was pleased that the head negotiators for each agreement were able to testify. Stearns noted that the Singapore and Chile FTAs mark "a significant departure" from past agreements due to the level of services commitments. Stearns also countered the argument of some Bush Administration critics, stating that bilateral trade agreements and regional and multilateral agreements are not mutually exclusive. Stearns pointed out Canada's success in leveraging its bilateral agreements in the context of regional and multilateral negotiations.

Stearns stated he was most concerned with whether the Singapore and Chile FTAs would be beneficial to all Americans and who would be the winners and losers of the two agreements.

Schakowsky: Congress Will Not Support Future Irresponsible Trade Policy

Ranking Member Jan Schakowsky (D-Illinois) was highly critical of the labor and environmental provisions in the two agreements. She also expressed concern with transshipment through Singapore and what she characterized as the "loophole" for Indonesian goods created by the Integrated Sourcing Initiative.

More generally, she emphasized that the United States must abide by international labor and environmental standards in order to have a "responsible trade policy." Schakowsky stated the U.S. Congress will not support future trade policy that (i) results in job losses in the United States, like she and other trade critics believe the NAFTA has done and (ii) does not address labor and environment "responsibly." Schakowsky mentioned the U.S.-Central America FTA

(CAFTA) specifically, stating that the United States must take a firm stance on labor and environmental standards.

Schakowsky conceded that the Singapore and Chile FTAs include many opportunities, but she believes they are overshadowed by the problems, particularly in labor and environmental standards.

Subcommittee Members Express Wide-Ranging International and Parochial Concerns

Although the hearing was intended to focus on the trade in services and e-commerce provisions in the two agreements, Members used their opening remarks to tell Administration officials about a variety of international issues and parochial concerns, ranging from the softwood lumber dispute and South Korea's bailout of Hynix Semiconductors to Chile's treatment of asparagus under the FTA.

Telecommunications Policy and Agriculture

- Representative Fred Upton (R-Michigan) stated that although he generally supports free trade, he has two concerns with the agreements: (i) the relationship between domestic and international telecommunications policy and (ii) with regard to the Chile FTA, ensuring that specialty crops like asparagus are treated fairly.

WTO Dispute Settlement

- Representative John Shimkus (R-Illinois), a self-proclaimed free trader, is concerned that the World Trade Organization (WTO) dispute settlement system takes "too long" and that the U.S. manufacturing sector is not benefiting from U.S. trade policy.

Singapore's Acquisition of Global Crossing

- Representative Edward J. Markey (D-Massachusetts) urged the Administration to intervene in Global Crossing's plan to sell a controlling stake to Singapore Technologies. Markey is concerned that Singapore would be both the owner and regulator of Global Crossing.

China's Handling of SARS Crisis

- Markey also urged USTR Robert Zoellick to raise the issue of China's handling of the SARS crisis at the upcoming WTO Ministerial Meeting in Cancun. Markey believes the WTO should make adherence to World Health Organization (WHO) guidelines a condition of continued membership in the WTO.

Members Question Whether Iraq Position is Delaying Chile FTA

Representative Jim Davis (D-Florida) stated that he is "increasingly concerned" about the delay in the signing of the Chile agreement. Davis wanted to know (i) the Administration's position on the Chile FTA; (ii) if the delay has anything to do with Chile's opposition to the war in Iraq; and (iii) when the delay will end.

Representative Sherrod Brown (D-Ohio) was extremely critical of the Administration's trade policy, which he believes only benefits the wealthiest while exploiting poor countries. In describing his trade policy, Brown referred to President George W. Bush as "our corporate commander in chief."

Brown made it clear that he believes Chile's opposition to the Iraq war is holding up the Chile FTA. Brown believes that if the Administration were really concerned with international coalition building, it would not delay such an agreement.

Ives Requests Favorable Consideration of U.S.-Singapore FTA

AUSTRs Vargo and Ives made brief introductory remarks about the Chile and Singapore FTAs, respectively. Now that President Bush has signed the Singapore FTA, Ives expressed the Administration's request that Congress favorably consider the FTA and implement it "later this year."

Schakowsky Accuses USTR of Misrepresenting ISACs' Support for FTAs

Schakowsky asked Ives why the Administration says that all of the Industry Sector Advisory Committees (ISACs), save the labor committee, endorsed the FTAs, when many of the ISACs expressed significant concerns with certain aspects of the agreements.

Ives stated that he was "summarizing the aggregate opinion." He went on to say that USTR had consulted with the ISACs to address their concerns and that USTR was under the impression that they had met the industry's concerns. Thus, according to Ives, USTR was "surprised" to see these concerns in the ISAC reports. Scakowsky concluded that if USTR was surprised by their criticisms, then USTR was aware of their concerns. Thus it is inaccurate to say that all but one of the ISACs supported the agreement.

Otter Expresses Concerns about Singapore's GLCs

Representative Butch Otter (R-Idaho) expressed concerns about Singapore's Government Linked Corporations (GLCs) to AUSTR Ives, asking if GLCs would be barred from exporting to the United States until they were privatized. Ives explained that GLCs would be able to export to the US, but that USTR has tried to ensure through the agreement that they will not have unfair advantages entering the U.S. market or competing against U.S. goods.

Otter also stated that he would be "suspicious" of future trade agreements because "we don't have a good record of enforcing agreements in the past."

Solis Expresses Concerns With Special Visas

Representative Hilda Solis (D-California) asked Vargo about the special visa provisions in the Chile FTA. Solis expressed concerns that Congress should have had oversight of any changes to immigration law.

Vargo explained that USTR held "extensive consultations" especially with the House and Senate Judiciary Committees, including twelve separate Congressional briefings on the Chile FTA in 2002. Vargo stated that Members expressed their concerns, and USTR "made sure they were provided for in the agreement." Vargo stated that USTR is still consulting "quite closely" with Congress on the Chile FTA.

Solis seemed unsatisfied with Vargo's answers and stated that a change to immigration law is an issue she does not want "to yield on in an up-or-down vote."

Davis Concerned that Chile FTA Will "Tie Our Hands" in FTAA

Representative Jim Davis (D-Florida) asked Vargo if the Chile FTA will "tie our hands" in the FTAA negotiations. Vargo did not directly answer the question but stated that the agreement (i) provides momentum; (ii) sends a clear signal to the Hemisphere of the U.S. level of ambition in free trade agreements; and (iii) demonstrates a willingness to open U.S. markets "within reasonable parameters."

Davis suggested to Vargo that Congress should be voting on the Chile FTA before the August recess, especially since FTAA market access negotiations are already underway. Vargo again avoided the question and stated, "A successful vote will provide momentum."

Along the same lines, Davis suggested that if the President does not sign the Chile FTA by the end of the month, Congress will not be able to vote on it before the August recess, due to the 60-day Congressional consideration period. Vargo stated that the Spanish translation of the FTA is not complete, and it cannot be signed before then.

Davis' final question focused on the impact of Chile's opposition to the Iraq war. Vargo also avoided this question and stated that President Bush believes the agreement is important and that the Administration wants to "move forward with it."

OUTLOOK

Analysts speculate that yesterday's hearing could signal the hurdles the Administration will face when Congress debates and votes on the implementing language for the two agreements. Analysts have long suspected that Congressional debate on the FTAs could be as contentious and time-consuming as debate on Trade Promotion Authority (TPA). Similar to yesterday's hearing, floor debate will likely center on a variety of broader multilateral concerns as well as parochial issues affecting individual Member's districts and states.

As the first agreements negotiated under the renewed fast-track authority, the Singapore and Chile agreements will serve as a test of the will of both Congress and the Administration. Moreover, the FTA votes will showcase Congressional support and opposition for concrete agreements as opposed to the more abstract concept of TPA. The votes will also show the Administration and the business communities what effort will be necessary for future FTAs as well as the FTAA and the Doha Round agreements.

It remains unclear when the President will sign the U.S.-Chile FTA. Most analysts believe he will eventually sign the agreement, after Chile has "learned its lesson" for not supporting the U.S. effort in Iraq.

USTR Releases 2003 "Special 301" Report on Status of Global Intellectual Property Protection

SUMMARY

On May 1, 2003, the United States Trade Representative (USTR) released the annual "Special 301" report, detailing the adequacy and efficacy of intellectual property (IP) protection in 74 countries. "Special 301," shorthand for Section 182 of the Trade Act of 1974, continues to monitor the status of intellectual property rights (IPR) abroad, categorizing and summarizing the IP shortcomings of countries whose policies are held to result in inequitable market access for U.S. products and patent holders.

The USTR continues to divide the majority of such countries into three categories: "Priority Foreign Countries," "Priority Watch List Countries," and "Watch List Countries." Only the most flagrant offenders are categorized as Priority Foreign Countries. In the 2003 Special 301 Report, only Ukraine was so designated. In 2003, 11 countries were designated Priority Watch List Countries, including Argentina and Brazil. The USTR placed 36 countries on the less egregious 2003 Watch List, including Chile and Mexico; Mexico had not appeared on the Watch List since 1999.

The final category employed is "Section 306 Countries," composed of countries with IPR status that will be closely monitored, and which are subject to prompt trade sanctions if IPR enforcement fails to meet the criteria set forth in applicable bilateral agreements. China and Paraguay were the two countries placed into Section 306 in the 2003 report.

The primary emphasis of the 2003 report was to decry what the USTR described as a "global scourge" of growing piracy and counterfeiting issues, especially in the realm of CDs, DVDs, and other optical media products. Secondary emphases included Internet piracy issues, foreign government use of illegal software, and health policy concerns, including the USTR's defense of the right of drug developers to enjoy a period of exclusivity with their costly pharmaceutical research data.

ANALYSIS

I. Overview of the Special 301 Report

In the annual Special 301 report, the USTR identifies those countries that fail to provide effective and adequate protection for IP rights or deny fair market access to U.S. citizens who rely on IP protection, pursuant to Section 182.

The USTR continues to divide the majority of such countries into three categories, in descending order of violation severity: "Priority Foreign Countries," "Priority Watch List Countries," and "Watch List Countries."

Countries identified as Priority Foreign Countries are usually subject to an investigation under the provisions of Section 301; these nations are committing the most egregious IPR

violations and are not making sufficient progress to address these problems via good faith negotiations. The USTR decides within 30 days whether to initiate an investigation into the policies or practices that led to that nation's Priority Foreign Country status.

The Special 301 report recognizes a fourth category of IPR violation, consisting of those countries subject to close Section 306 monitoring. Section 306 nations are subject to particularly prompt trade sanctions if IPR enforcement fails to meet the criteria set forth in applicable bilateral agreements. The USTR is poised to enact sanctions or initiate an out-of-cycle review into the IPR practices of such nations.

In the 2003 Special 301 report, USTR will focus special attention on recurring IPR problems in the 74 countries under review. These concerns include the burgeoning issue of global piracy and counterfeiting, especially in the realm of CDs, DVDs, and other optical media products. Other concerns addressed by the report include Internet piracy issues, foreign government use of illegal software, and health policy concerns, including the USTR's defense of the right of drug developers to enjoy a period of exclusivity with their costly pharmaceutical research data.

II. The 2003 Special 301 Report

In the 2003 Special 301 Report, the USTR identified one Priority Foreign Country, 11 Priority Watch List countries, and 36 Watch List countries; a total of 48 IPR-poor nations out of 74 surveyed that USTR surveyed.

In a cautiously optimistic tone, the USTR noted the advance of IPR defense in many nations. Chile and Singapore were commended for their bilateral agreements with the US, under which IP rights will be strengthened as set forth in the World Trade Organization (WTO) Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement. The USTR looks for similar positive results from anticipated Free Trade Agreements (FTAs) with Central America, Morocco, Australia, and the Southern African Customs Union.

Nevertheless, according to the USTR, a global lack of international enforcement of IP rights continues to cost the U.S. economy hundreds of billions of dollars a year. One of the most egregious offenders, Ukraine, will remain the only country on USTR's Priority Foreign Country list, and its products will remain subject to the $75 million in sanctions imposed in January 2002. While most Special 301-censured nations are WTO Members lacking wholehearted enforcement of TRIPs provisions, Ukraine still lacks the necessary laws under which optical media piracy and other IP violations can first be addressed as criminal. The USTR warned that this lack of IP regulation endangers Ukraine's bid to join the WTO.

The USTR insisted that counterfeiting and piracy represent a "global scourge," having grown in sophistication and scope over the last few years. In particular, the increasing piracy of digital media offers huge profit and only slight risk for international criminals. The USTR will press for action regarding U.S. trading partners where optical media are granted little or no IP protection.

The USTR continues to place a high priority on pressing for full TRIPs implementation for WTO members, especially developing and recently acceded countries. Non-compliant nations were warned that the USTR will readily adopt trade preference programs to improve IP protection. Still, the U.S. Government will continue to offer assistance to nations endeavoring to implement TRIPs standards of IPR legislation and enforcement. Of particular concern to the USTR is the creation and enforcement of laws that support a "period of data exclusivity" for pharmaceutical innovators, as set forth in the TRIPs agreement. Countries not already implementing Article 39.3 of TRIPs were reminded that medical innovation relies on a government's protection of the profitability of pharmaceutical research.

Internet piracy issues received significant consideration in the 2003 Special 301 report. The USTR looked for trading partners to ratify and implement the 1996 copyright treaties of the World Intellectual Property Organization (WIPO), known collectively as the WIPO Internet Treaties, which safeguard IP protection in the electronic transmission of copyrighted works. The USTR will press for incorporation of the WIPO Internet Treaties in its bilateral FTAs, as was recently accomplished in the FTAs with Chile and Singapore.

Special 301 reported the USTR's success in striving to ensure the legitimate use of software by many foreign governments, while noting that such regulations are conspicuously absent in others. Meanwhile, the USTR upheld its own approach to health-related international IP issues, meaning that the United States' commitment to fighting disease in developing countries is limited to what is permissible in the TRIPS framework; TRIPS allows significant flexibility for the world's least developed nations.

Finally, the Special 301 report reviewed two WTO disputes in which the United States is involved: Although an open 1999 dispute settlement case involving Argentina's lack of patent and data protection was partially settled in April 2002, the USTR remains concerned about Argentina's paucity of data protection enforcement. In a separate dispute, the USTR continues to insist that European Union agricultural law (Regulation 2081/92) does not provide TRIPs-sufficient defense of foreign trademarks, and remains committed to pursuing the issue.

The USTR placed China and Paraguay under close Section 306 monitoring, observing the failure of both countries to uphold the IPR standards set by bilateral agreements. Both are subject to prompt trade sanctions if IPR enforcement fails to meet the criteria set forth in the applicable agreement.

A total of 47 countries were placed on one of the Special 301 Report Watch Lists. Their distribution is as follows:

The USTR placed 11 trading partners on the **2003 Priority Watch List**:

Argentina	Bahamas	Brazil
European Union	India	Indonesia
Lebanon	Philippines	Poland
Russia	Taiwan	

The USTR placed 36 countries on the **2003 Watch List**:

Azerbaijan	Belarus	Bolivia
Canada	Chile	Colombia
Costa Rica	Croatia	Dominican Republic
Ecuador	Egypt	Guatemala
Hungary	Israel	Italy
Jamaica	Kazakhstan	Korea
Kuwait	Latvia	Lithuania
Malaysia	Mexico	Pakistan
Peru	Romania	Saudi Arabia
Slovak Republic	Tajikistan	Thailand
Turkey	Turkmenistan	Uruguay
Uzbekistan	Venezuela	Vietnam

USTR Identifies "Section 1377" Barriers to the Effectiveness of U.S. Telecommunications Trade Agreements

SUMMARY

The United States Trade Representative (USTR) recently released its annual review of the operation and effectiveness of U.S. telecommunications trade agreements under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 3106). USTR acknowledges progress in many countries but is continuing to monitor and engage U.S. trade partners on an ongoing basis.

USTR identified a number of country-specific issues as well as three broader trade and regulatory concerns including: (1) high rates for connecting calls to mobile and fixed-line networks in foreign markets; (2) lack of reasonable access to leased lines; and (3) the absence of independent, effective regulators able to tackle these and other issues that otherwise might impede competition in foreign markets.

ANALYSIS

On April 2, 2003, the United States Trade Representative (USTR) issued its annual review of the operation and effectiveness of U.S. telecommunications trade agreements, as required under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 3106). This review was based, among other things, upon the input provided by comments and reply comments submitted by fifteen parties, with its overall findings and conclusions expressed in a direct and forceful manner.

While acknowledging that progress had occurred in many countries, USTR remains committed to sustained monitoring of and engagement with U.S. trade partners on an ongoing basis. Moreover, in addition to a number of country-specific issues, USTR identified three broader trade and regulatory concerns warranting specific attention: (1) high rates for connecting calls to mobile and fixed-line networks in foreign markets; (2) lack of reasonable access to leased lines; and (3) the absence of independent, effective regulators able to tackle these and other issues that otherwise might impede competition in foreign markets.

I. Rates for Mobile/Fixed Line Interconnection

USTR has previously expressed concerns regarding the reasonableness of rates imposed for termination of international calls into mobile networks. Notwithstanding efforts by some WTO members to address this concern, the ever-increasing levels of such traffic means that the magnitude of this problem continues to loom large. By way of illustration, USTR contrasted indicative examples of wholesale termination rates in a nine key countries, ranging from $ .075 per minute in the U.K. to $ .275 per minute in Switzerland, with retail mobile rates in the U.S. that were offered at less than $ .07 per minute. USTR indicated that it would continue to monitor the situation and would consider further steps in the absence of actions by national regulatory authorities to address persistently excessive rates. USTR also expressed concern about increases

in fixed line interconnection rates in certain countries, including Japan and the Dominican Republic.

II. Reasonable Access to Leased Lines

With regard to access to leased lines for local access, USTR identified a number of concerns including unreasonable delays and discriminatory action as well as pricing levels. Leased lines are of critical importance in fostering competition, since they often serve as the "last mile" link for reaching large customers. Thus access or pricing impediments can have deleterious effects on competitive entry. Germany and France were specifically identified as countries where non-discriminatory access continued to be a concern, and Australia, Singapore and Switzerland were among the markets in which USTR believed that unreasonably high prices were charged for leased lines. USTR strongly encouraged national regulators to develop benchmarks for leased line rates as a means of enforcing a standard of reasonableness for such charges.

III. Lack of an Independent Regulator

The lack of an independent regulator with adequate authority was the third general concern highlighted by USTR. This was identified as a priority item for a number of countries, including China, France, Germany, India, Japan, Mexico, South Africa and Switzerland. USTR cited the existence of such a regulator as probably the single most important factor for ensuring adequate implementation of WTO commitments. In pursuing this matter further, USTR indicated its commitment to raise this issue in ongoing bilateral dialogues as well as to incorporate this requirement as an essential element of Free Trade Agreement (FTA) negotiations with other countries.

IV. Country-Specific Issues

In the case of the following eight countries, USTR also identified issues of a more specific nature requiring further monitoring on its part: Antigua and Barbuda, Brazil, Canada, China, India, Korea, Mexico, and South Africa.

- In ***Antigua and Barbuda***, the concern (access to the mobile wireless market) that had been identified in comments submitted had been resolved by the time that the 2003 review was issued.

- For other countries, the concerns included:

  - ***Brazil—***access to leased lines and absence of regulatory transparency;

  - ***Canada—***access by internet service providers to high-speed data transport services;

  - ***China***—implementation of market access commitments in basic and value-added telecommunications;

- ***India***—imposition of a surcharge on international calls;
- ***Mexico*—**discrimination in areas of numbering plans and interconnection quality;
- ***Korea*—**mandating of a national standard governing the delivery of mobile Internet services; and
- ***South Africa*—**restrictions on resale of basic telecommunications services.

- Moreover, for many of these countries (China, India, Mexico, and South Africa), the absence of an impartial independent regulator was again seen as a contributing factor to other problems and also served to discourage foreign investment in the telecommunications sector in the affected countries.

OUTLOOK

Many of these concerns, both general and specific, carry over from USTR's 2002 annual review. As such, analysts expect there to be increasing urgency for resolution. In terms of economic impact, the continuing significant increase in the volume of mobile terminations places this issue at the top of the priority list and is the one most likely to trigger further action if corrective measures are not otherwise taken. For concerns of a more structural nature (*e.g.*, absence of an independent regulator), analysts expect to see these issues pursued in ongoing bilateral trade negotiations, as well as multilaterally in the Doha Round.

WTO NEGOTIATIONS

WTO Members Miss Major Deadlines, But Negotiations Not in a State of Crisis

SUMMARY

Since the beginning of 2003, WTO Members have experienced major difficulties in negotiating the Doha Development Agenda and have failed to reach key deadlines. In particular, the outstanding deadlines left over from 2002 (*i.e.* Public Health Decision and special and differential treatment) remain unresolved, and yesterday's failure to agree on modalities for the negotiations on agriculture, though it had been expected, will have repercussions in other areas of the Doha agenda and in the preparations for the Ministerial Conference at Cancun in September.

In these circumstances it would be easy to paint a pessimistic picture of impending crisis at Cancun and failure in the Doha Round itself, but that would be misleading. Despite the well-publicized disagreements and missed deadlines, much useful technical work is being done in many areas including agriculture, services, industrial goods and rules negotiations. Moreover, greater progress has been made in this Round than at comparable stages of the Tokyo and Uruguay Rounds.

ANALYSIS

I. Summary of Key Events

The major development thus far in 2003 is the failure of the Committee on Agriculture to agree on the draft modalities for the negotiations by the deadline of March 31, 2003. The Chairman of the negotiating group, Stuart Harbinson, had put forward two drafts in mid-February and a revised draft in mid-March in order to move negotiations forward. WTO Members, however, were unable to reach consensus on these drafts and it is now assumed that they will not reach agreement before Cancun. Agriculture is the priority issue for many developing countries and other Members; thus, the lack of an agreement does not bode well for the Round as a whole. The failure to meet the March deadline will mean that Cancun will be a very difficult and acrimonious meeting.

WTO Members will assess Doha negotiations at a senior-level meeting (many delegations will send their deputy trade ministers) of the Trade Negotiations Committee, convened for April 3-5. It will be the intention of WTO Director-General Supachai Panitchpakdi, in his capacity as Chairman of the TNC, to engender a sense of urgency and encourage political momentum, which has been lacking.

Despite yet another major deadline missed, the mood among negotiators is one of resignation rather than of crisis. Though no overt connection has been made between progress

on the Round with the war in Iraq, it is assumed by many that the political crisis in Iraq has inevitably monopolized the focused attention from governments. This high-level political commitment is needed to move the Round into a higher gear. The failure to agree on agriculture modalities was widely expected, and it is becoming a universal assumption (though it has not been said officially), that the Round cannot be completed by the end of December 2004.

II. Deadlocks Continue at Tokyo "Mini-Ministerial"

Japan hosted a "mini-Ministerial" meeting attended by 22 trade ministers[10] on February 14-15; however, the meeting did not make much progress on agriculture or other Doha issues. Ministers in Tokyo also attempted, but failed to break the deadlocks in other areas, including special and differential treatment of developing countries and improving access to patented medicines (e.g. through compulsory licensing) for the poorest countries (as mandated by the TRIPS and Public Health Decision in Doha).

Prior to the meeting, Stuart Harbinson circulated a first draft of agricultural modalities in an attempt to jump start substantive negotiations. Harbinson's draft was prepared under his personal capacity after extensive consultations with Members and review of negotiating proposals, and attempts to provide a balanced approach to modalities. Harbinson's draft, however, was met with criticism on most fronts in Tokyo and afterwards. Discussions in Tokyo on draft modalities for agriculture highlighted the differences between the Cairns Group of agricultural exporters and the US on one side and the EU, Japan and Korea on the other. It was agreed only that Harbinson's draft modalities could serve as a catalyst for the negotiations.

The discussion on TRIPS and Public Health also failed to break the deadlock despite a compromise proposal by Brazil which would have given the World Health Organization a role in assessing the ability of developing countries to manufacture patented medicines. The US remained isolated in its opposition to the various proposals which have been made. Moreover, no further progress on this issue has been made since the Tokyo meeting.

The next "mini-Ministerial" will take place in Egypt at the end of June, date and venue to be determined.

III. Trade Negotiations Committee Takes Stock of Negotiations

The Trade Negotiations Committee ("TNC") – the WTO's coordinating body for the Round, met in Geneva on February 4-5 and again March 4-5 in order to take stock of progress in the negotiations. Both meetings were overshadowed by the failure of the WTO's subsidiary negotiating bodies to reach agreement on three issues of particular importance to developing

[10] Ministers in attendance include those of Australia, Brazil, Canada, Chile, Costa Rica, Egypt, the EU, Hong Kong, India, Indonesia, Japan, Kenya, Lesotho, Malaysia, Mexico, New Zealand, Nigeria, Senegal, Singapore, South Korea, Switzerland, and the US. China and South Africa were invited, but did not attend.

countries – implementation, special and differential treatment for developing countries, and the TRIPS and Public Health Decision (*Please Refer to Report No. 1, February 1, 2003*).

At the March TNC meeting, Director-General Supachai warned of imminent gridlock in the negotiations, citing the lack of progress in most areas of the Round. At the February TNC meeting, he was particularly critical of intransigent attitudes in the debate about "implementation" issues concerning developing countries, of which some 80 are still outstanding. The implementation debate has been a running sore in the WTO since well before the Seattle Ministerial in 1999, and it will be impossible to settle all issues to the satisfaction of developing Members (some require renegotiation of Uruguay Round commitments). Dr. Supachai had hoped at least to begin to segregate the more difficult and political implementation issues, which can only be dealt with in negotiation, from the more technical and manageable ones. Some Members however resisted any discrimination between different elements of the implementation agenda.

Dr. Supachai also warned of a "lack of real engagement" among the negotiators, and this may be a major part of the problem. It is not clear that the Doha Round is yet a high priority for any of the major participants. There is not yet, among the major industrialized countries, the sense of common commitment to a shared agenda – a sentiment that carried the Uruguay Round through many disagreements and missed deadlines.

IV. Agriculture: A Key Deadline Missed; Work Program Until Cancun

Stuart Harbinson's first draft of the negotiating modalities for agriculture was circulated on February 12 and was criticized heavily by all sides – by Japan and the EU as being unbalanced and neglectful of "non-trade concerns" such as food safety and the environment, and by the Cairns Group and the US as lacking ambition on subsidy and tariff reductions. (China, India and some other developing countries have however expressed qualified support for the draft).

Harbinson proceeded to engage in intensive consultations in order to issue a revised draft by mid-May. These consultations, however, failed to narrow major differences or to produce new ideas. As a result, Harbinson's revised draft circulated on March 18 differed little from the original apart from some minor changes designed to benefit developing countries. Harbinson explained that there had been insufficient guidance from Members to do more. The revised draft was not accepted and has been criticized in similar terms to the original. In recent weeks before the March 31 deadline, there had been some fear of a breakdown in the negotiations. However, late on March 31, the Committee on Agriculture agreed to submit to the Trade Negotiations Committee for approval on 4 April a work program for the months prior to Cancun. Thus, it is clear that the technical work will continue in an effort to conclude modalities prior to, or at Cancun.

It must be understood that the agriculture modalities are critically important. They are far more substantive than the modalities for services and industrial goods, for example, and will to a considerable extent decide the outcome of the negotiations – so much so that once the modalities

are agreed it should be possible to wrap up the negotiations within less than a year. The existing draft, though it has been criticized for lack of ambition, is nevertheless far-reaching and provides a good basis to negotiate a compromise. Experienced agriculture negotiators do not find it surprising that agreement cannot be reached at this stage, when there is no compelling external force, such as the expiration of U.S. trade negotiating authority (not until 2006-2007), and do not expect agreement to be reached on modalities before Cancun. One of the problems of the agriculture negotiations is that for once they are in advance of, not trailing behind, the bulk of the agenda.

V. Services: Negotiations Enter an Advanced Stage with Tabling of "Offers"

The services negotiations continue to progress more smoothly than most others, and have moved into the advanced stage of "offers" as of March 31. However, the pace of services negotiations now will probably be affected by parity in agriculture negotiations.

Initial offers of market access liberalization for services were due to be submitted by March 31, and ten countries have met the deadline. The submission of further offers, including that of the EU, is imminent. Others will be late for practical reasons and some will hold back in reaction to the delay in agriculture; Brazil had already indicated this possibility. For whatever reasons, initial offers will come in piecemeal over the next few months and will be the subject of intensive bilateral negotiations. The offers of the US and Canada (and soon the EU) have been published due to growing, but misplaced criticism that GATS negotiations undermine public services (*e.g*. health, education, water distribution).

In another sign of progress, services negotiators also succeeded in agreeing on modalities for the treatment of autonomous liberalization (i.e. liberalization undertaken unilaterally, without reciprocal liberalization by others). The modalities are essentially guidelines for bilateral negotiations: they create some negotiating leverage by giving credit to countries – mostly developing countries – which have liberalized autonomously. Credit can take the form of further liberalization by their trading partners or of reduced pressure for further liberalization on their own part. The modalities create no legal rights or obligations.

On a more negative note, the outgoing chairman of the Working Party on GATS Rules, Thomas Chan of Hong Kong, reported in pessimistic terms on March 14 the unlikely prospects of agreement in the negotiations on an Emergency Safeguard Measure, as provided by GATS Article X. This negotiation, encouraged by some developing countries and opposed by most developed countries, has been running since 1995 with no real sign of agreement even on the desirability and feasibility of a safeguard provision.

Members have extended the deadline on ESM negotiations repeatedly, and appear to have four choices by the current deadline of March 15 2004: (i) to abandon the negotiations; (ii) to extend the deadline for yet a fifth time; (iii) to suspend the negotiations and resume them in the light of further experience of the operation of the GATS; or (iv) to find an alternative approach to bringing the negotiations to an end. Members must take caution to avoid the recriminations and damage to North-South relations that might follow simple abandonment.

VI. Industrial Tariff Negotiations: Agreement on Modalities Within Reach

The Negotiating Group on Market Access is scheduled to agree by May 31 on modalities for negotiations on tariffs and non-tariff barriers for non-agricultural, industrial products. At the most recent session on March 25, Members discussed recent proposals (about twenty to date), and are not far apart on agreement on negotiating approaches. For example, most Members support starting negotiations from a bound rate, and using a combination of (i) formula; (ii) harmonization; and (iii) request-offer approaches. Recently, two groups of developing countries made proposals and further submissions are expected before the May 31 deadline. The ambitious U.S. proposal of tariff elimination by 2015 is still on the table, but has been criticized by many Members as not providing enough flexibility for developing countries.

Unless linkage with agriculture makes it impossible, agreement on modalities for industrial tariff negotiations by the May 31 deadline – or at least substantial progress towards agreement – is not out of the question. The next meeting of the Group will focus on non-tariff barriers.

VII. Singapore Issues at Risk; Linkages with Agriculture

The four "Singapore Issues" of Investment, Competition, Trade Facilitation and Transparency in Government Procurement have been umbilicaly linked as "new" issues since the 1996 Singapore Ministerial Conference and Members dispute the status of negotiations. The Cancun Ministerial is intended to complete the Doha Agenda by launching negotiations on these subjects on the basis of modalities to be agreed at Cancun. Investment and Competition are by far the most controversial of the issues, and strong resistance toward negotiations persists. Investment arouses stronger feelings, among both its supporters and opponents, than Competition. Many regret the failure at Doha to delink from these two issues the mandate to negotiate on trade facilitation and transparency in government procurement.

The linkage between Competition and Investment (and possibly the other two issues as a grouping) with agriculture will be critical to the outcome at Cancun since the EU and Japan are seen as the major *demandeurs* of these two issues, and also happen to be the most resistant to agriculture liberalization. It is clear that without agreement on agricultural modalities nothing will happen on these, but does the link also work the other way? (*i.e*. the extent the lack of agreement on Competition and Investment will discourage the EU and Japan on agriculture).

The delay until Cancun of a decision on agriculture modalities sets up the possibility of a deal involving agriculture and the Singapore issues, but that would be a very complex and risky negotiation, perhaps overloading Cancun's agenda beyond possibility of agreement. Explicit work on modalities for Investment and Competition (as well as Trade Facilitation and Transparency in Government Procurement) has not really started in Geneva, but in both areas a

great deal of useful technical work has been done. Thus, effective negotiations could begin if and when a decision is taken to do so.

VIII. Dispute Settlement Understanding: Deadline Not Within Reach

Negotiations on the improvement and clarification of the Dispute Settlement Understanding are scheduled for conclusion by May 31. Although some progress was made in the most recent meetings in March, there are many proposals on the table and most Members are unwilling to withdraw ideas with little or no prospect of acceptance. Some of these ideas are highly controversial, including Members' rights to compensation and retaliation on an MFN basis, retroactive compensation and recovery of monetary damages for unsuccessful disputes, among others. Thus, due to many complex and somewhat unrealistic ideas put forth on reforming the DSU, it is improbable that the May 31 deadline can be met.

OUTLOOK

The number of unresolved issues and missed deadlines at the WTO in the past three months might provoke alarm of overload and recrimination at Cancun, but Doha Round negotiations appear more manageable when placed in a broader context. It is important to remember that the Doha Round has been in progress for only 15 months, even though agriculture and services officially started in January 2000. At the same stage in the Tokyo and Uruguay Rounds, far less had been achieved. The Uruguay Round agenda also was larger and sought to create significant new agreements (TRIPS, GATS, among others). Rather than the exception, periods of slow progress and acrimonious mid-term meetings are a normal feature of major rounds of negotiation.

Nevertheless, there are some worrying signals coming from the Doha Round. Two major differences are appearing between the current situation and the Uruguay Round. The first is the lack, so far, of a shared commitment by the major players to converge towards a common agenda that is sufficiently compelling to carry the negotiations through the inevitable periods of difficulty.

Examples of a lack of convergence include the several issues which are priorities for the EU but are widely controversial for most Members: Investment, Competition, the environment and geographical indications. The US is skeptical or undecided, but not a *demandeur*. This gap between the US and EU on major new issues contrasts with the shared interest of the Quad countries (*i.e.* US, EU, Canada and Japan) during the Uruguay Round on the "new areas" of services and intellectual property in particular. In another example, the US is seen by most Members as too zealous in its position (and hence, isolation) in blocking agreement on the matter of TRIPS and Public Health.

The second major difference in this Round is the importance of the development agenda, which has been marked by the active participation of developing countries. The "Doha Development Agenda" is a self-professed commitment to the promotion of development, and many developing countries are intent to reap additional flexibility and market access for their

priority interests. Moreover, agreement among OECD countries alone – although still necessary, will not be enough to conclude agreements, as was predominantly the case during the Uruguay Round.

On a final note, there exists nearly universal skepticism that the Round can be concluded by the deadline of December 31, 2004. Based on the recent missed deadlines, delegations know that more time is needed and that it will be available. Already, the Cancun Ministerial is looking to become a heavy agenda that might have to settle outstanding issues on agriculture, implementation and TRIPS and Public Health. In some respects, WTO Members are already working on the premise that 2004 is not a "deadline" but another moving target.

US Releases Publicly its WTO Services Offer; WTO GATS Negotiations Move Forward

SUMMARY

On March 31, 2003, the United States Trade Representative (USTR) released publicly the U.S. services offers in the context of ongoing WTO negotiations to expand coverage of the GATS. The U.S. offers were made in consultation with domestic stakeholders, including Congress, trade advisory groups, and various local and state representatives. The U.S. offers include the following services sectors, among others: insurance; banking and other financial services; telecommunications and information services; express delivery; environmental services; and energy services.

Due to what USTR characterizes as "false assertions sometimes raised by opponents of trade," USTR clarified that the United States shall not negotiate services commitments in public services, including: government monopoly service suppliers (*e.g.*, water authorities); government programs targeted towards U.S. or minority citizens; and the autonomy of U.S. educations institutions.

In addition, ten WTO Members have met the initial deadline of March 31, 2003 for the tabling of offers for market access liberalization in services. More offers are expect soon, including from the EU among others.

WTO Members also achieved progress during the March "Services Week" of negotiations on the methodology for autonomous liberalization, but the deadlock persists on developing an emergency safeguards mechanism. In addition, many WTO Members issued a statement advocating liberalization of maritime services, intended to pressure the US which has been resistant to these negotiations.

ANALYSIS

I. US Offer Binds Existing Market Conditions; Addresses Public Services

The US offer announced by USTR on March 31, 2003, binds market access improvements it has made since the conclusion of the Uruguay Round, and provides additional liberalization in certain sectors including financial and telecommunications. The announcement of the US offer was accompanied by an effort to dispel belief that the WTO is forcing liberalization in public services.

Highlights of the U.S. offer include:

- ***Insurance*** – Provides improved access for insurance brokers and agents. For example, the offer improves existing entry rights for insurance branches. Also, foreign brokers are offered additional access to handle large U.S. contracts.

- ***Banking and financial*** – Reduces registration requirements applicable to foreign-owned banks. Ensures a framework for financial modernization so that non-U.S. entities can provide a variety of competitive financial services (binds reform of Glass-Stegall Act).

- ***Telecommunications and network/Internet*** – Offers foreign ownership of cable television networks and allows non-U.S. satellite companies to broadcast directly to American viewers. Expanded rights of foreign providers to offer information/network services, such as Internet access, directly to U.S. customers.

- ***Environmental*** – Cites pollution prevention services, and emphasizes the importance of further liberalization in environment services.

- ***Energy*** – Improves access to services incidental to mining and energy distribution, and new commitments for pipeline storage of fuels, storage and warehouse services, bulk storage of liquids and gases, and some technical testing and analysis services. The U.S. offer does not contain any commitments on production of energy, mining, or ownership of energy resources.

- ***Express delivery*** – Provides equal treatment to foreign-owned express delivery providers to the U.S. market.

In an attempt to address fears that the WTO would compel liberalization in public services, the US emphasized that it was not offering to liberalize, or privatize the following sectors or rights:

- ***Government monopolies*** – Does not provide the right to acquire or invest in government monopolies such as the U.S. Postal Service.

- ***Regulatory actions*** – Does not infringe on the right of federal and sub-federal governments to establish, maintain, and fully enforce domestic laws protecting consumers, health, safety, and the environment.

- ***U.S. citizen- and minority programs*** – Does not require changes to federal and sub-federal assistance programs available only to U.S. citizens or U.S.-owned companies, such as Small Business Administration loans, Overseas Private Insurance Corporation (OPIC) insurance, Trade and Development Agency financing, and other programs.

- ***Education*** – Does not apply to public elementary or secondary schools, or to public funding of education. There is no intention to promote the privatization of public educational institutions. The offer does not interfere with the ability of individual U.S. education institutions to maintain autonomy in admissions policies, setting tuition rates, and developing curricula or course content.

- ***Water distribution*** – GATS does not require privatization or deregulation of any public service, including water supply or distribution services. The U.S. offer does not include water supply or distribution.

II. EU and Other Offers Expected

The EU's offer was outlined by EU Trade Commissioner Lamy in early February and should become public by early April 2003. The EU offers no further concessions in sensitive areas like public services such as health, and education services, as well as in audiovisual services. The EU is offering further liberalization in computer-related services, postal services, telecommunication services, distribution, environmental services, financial services, tourism and transport services. In a gesture to developing countries like India who seek to facilitate movement of their professionals ("Mode 4" liberalization), the EU offered to allow self-employed skilled professionals working in computer services and engineering the right to enter the EU for up to six months to provide services to EU clients.

In most of the sectors where the EU offers expanded market access, it has done so by removing or relaxing limitations at the EU-Member state level. In postal services, for instance, the EU expands its current schedule ("Courier Services – special delivery services only") to include "Handling of addressed written communications of any kind of physical medium (footnote omitted) including Hybrid mail service, and Direct mail."[11] With respect to retailing services, the EU offer still maintains an economic needs test for department stores but offers to administer it on a national treatment basis (i.e. such that non-EU nationals and EU nationals must fulfill the same criteria). Furthermore, the number of EU Members applying the economics needs test has been reduced from 12 to 5 (i.e. Belgium, Denmark, France, Italy and Portugal).[12] The EU does not offer any expansion of its market access in energy services, which is not surprisingly since negotiations on the classification of energy services are continuing.

In addition, ten WTO Members have met the initial deadline of March 31, 2003 for the tabling of offers for market access liberalization in services. The number appears low, but is respectable considering this is an early stage in market-access negotiations. In order to bolster the credibility of the talks, the US, EU, Japan and Canada among others have made initial offers. Others will be late for practical reasons and some will hold back in reaction to the delay in agriculture; Brazil had already indicated this possibility.

For whatever reasons, initial offers will come in piecemeal over the next few months and will be the subject of intensive bilateral negotiations. The offers of the US and Canada (and soon the EU) have been published due to growing, but rather misplaced criticism that GATS negotiations undermine public services (*e.g.* health, education, water distribution).

[11] European Communities and their Member States - GATS Offer, referred to online at www.gatswatch.org on 18 February 2003

[12] Ibid.

III. WTO Members Achieve Progress on Autonomous Liberalization; Deadlock Remains on Emergency Safeguard Mechanism; Pressure on US Over Maritime Services

A. Progress Achieved on Modalities for Autonomous Liberalization

In another sign of progress, the Council on Trade in Services on March 6, 2003 succeeded in agreeing on modalities for the treatment of autonomous liberalization (i.e. liberalization undertaken unilaterally, without reciprocal liberalization by others).

The mandate for autonomous liberalization is stated as follows: "Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations…"[13] The negotiating guidelines restated this mandate: "Based on multilaterally agreed criteria, account shall be taken and credit shall be given in the negotiations for autonomous liberalization undertaken by Members since previous negotiations. Members shall endeavor to develop such criteria prior to the start of negotiation of specific commitments."[14]

The modalities are essentially guidelines for bilateral negotiations: they create some negotiating leverage by giving credit to countries – mostly developing countries – which have liberalized autonomously. Credit can take the form of further liberalization by their trading partners or of reduced pressure for further liberalization on their own part. The modalities create no legal rights or obligations.

B. Deadlock on Emergency Safeguards Mechanism

Among other developments, it appears that the discussions on the establishment of an emergency safeguards mechanism ("ESM") for services have come to a standstill. The Chairman of the Working Party on GATS Rules, Thomas Chan on March 14, 2003 issued a pessimistic statement that there is very little convergence on even basic issues including the desirability and feasibility of an ESM.

Chan noted that: "In fact, discussions in recent years seems [sic] to indicate that as the discussion becomes more in-depth and refined, divergences of views in respect of the various issues become more apparent and glaring."[15]

The negotiations on an ESM, encouraged by some developing countries like ASEAN countries and opposed by most developed countries, has been running since 1995 with no real sign of agreement. Members have extended the deadline on ESM negotiations repeatedly, and

[13] GATS Agreement, Article XIX: 3 (Negotiation of Specific Commitments)

[14] Guidelines and Procedures for the Negotiations on Trade in Services, S/L/93, 29 March 2001, para. 13

[15] Report of the Chairperson to the Working Party on GATS Rules, Negotiations on Emergency Safeguard Measures, S/WPGR/9, 14 March 2003, para. 18

appear to have four choices by the current deadline of March 15, 2004: (i) to abandon the negotiations; (ii) to extend the deadline for yet a fifth time; (iii) to suspend the negotiations and resume them in the light of further experience of the operation of the GATS; or (iv) to find an alternative approach to bringing the negotiations to an end. Members must take caution to avoid the recriminations and damage to North-South relations that might follow simple abandonment.

C. Pressure on US to Liberalize Maritime Services

Regarding maritime services, 52 WTO Members on March 3, 2003, including China, India, the EC, Malaysia, Norway and Singapore, made a statement requesting that maritime services not be excluded from the negotiations. In a thinly veiled statement directed at the US, which has resisted efforts to liberalize maritime services, the statement calls for "the active participation of all Members in the on-going negotiations with a view to achieving meaningful liberalization of the maritime transport service sector, consistent with sustainable development, security and safety…"[16]

OUTLOOK

Services negotiations continue to progress more smoothly than most others, and have moved into a more advanced stage with the tabling of "offers" as of March 31, 2003. However, the pace of services negotiations now will probably be affected by parity in agriculture negotiations – which failed to conclude modalities by the same date.

[16] Council for Trade in Services, Joint Statement on the Negotiations on Maritime Transport Services, Communication from Australia, Canada, Chile, People's Republic of China, *et.al.*, TN/S/W/11, 3 March 2003.

WTO Members Fail to Meet Deadline on Agriculture Modalities; Revised Harbinson Draft on Modalities Does Not Break Deadlock

SUMMARY

On March 31, 2003, WTO Members failed to agree on modalities for agriculture negotiations by the mandated deadline of the Doha agenda. Members were unable to narrow their differences despite intensive consultations in the final weeks and a revised draft on modalities circulated by Stuart Harbinson, Chairman of the Negotiating Group on Agriculture. Harbinson's "revised" draft circulated on March 18 (he did not call it a "second draft") differed little from the original (circulated February 12), apart from some minor changes designed to benefit developing countries. Members criticized Harbinson's revised draft in similar terms to the original.

Due to the lack of agreement, Members at the March 31 meeting of the Committee on Agriculture agreed to submit to the Trade Negotiations Committee on April 4 a work program for the months leading up to the Cancun Ministerial in September. Thus, work on agriculture will continue in an effort to reach modalities, but is unlikely to conclude until Cancun.

Agriculture is the highest priority issue for most developing and other countries. The WTO's inability to meet this key deadline on agriculture, though it had been expected, will have repercussions in other areas of the Doha agenda.

ANALYSIS

I. Members Miss Important, But Not Critical Deadline on Agriculture Modalities

On March 31, 2003, WTO Members failed to agree on modalities for agriculture negotiations as mandated by the Doha Declaration.[17] Members missed this important deadline despite intensive efforts to reach a decision in the final weeks. Chairman Stuart Harbinson of the Negotiating Group on Agriculture on March 18 had circulated a revised version[18] of his first draft on agriculture modalities, circulated February 12 *(Please refer to our March 11, 2003 report on the Harbinson draft).* Members expressed displeasure with the revised draft, which did not change much from the first draft. They attempted, although unsuccessfully, to break the deadlock during "Agriculture Week" (March 25-31).

Harbinson cautioned, however, that since major disagreements continue among Members, there was "insufficient collective guidance" to enable him to modify significantly the first draft. Harbinson revised the first draft after discussions among delegations, and at the Special Session held on February 24-28, 2003.[19] He did not refer to the paper as a "second" draft, but as a

[17] WT/MIN(01)/DEC/1, at paragraph 14.

[18] TN/AG/W/1/Rev.1, dated March 18, 2003.
[19] TN/AG/W/1, dated February 17, 2003.

"revised" version of the first paper. This clarification is politically important since it was intended to counteract the negative reaction of certain Members that refused to accept the draft as a basis for negotiation.

The revised draft contains additional flexibility for developing countries, but does not propose significant revisions on the "three pillars" of agriculture: market access, export competition and domestic support. Not surprisingly, the major key players including the EC, US and Cairns Group rejected the revised draft as too ambitious, or not going far enough. Nevertheless, Members have agreed to move forward with technical work in order to conclude modalities by the more critical target date of the Cancun Ministerial.

II. Harbinson's "Revised" Draft Provides Additional Flexibility; Cites Areas for Further Work

Harbinson in the revised draft called upon Members to make "a major negotiating effort" and to be ready "to engage in serious negotiations aimed at finding solutions that can attract broad-based support."[20] Harbinson is trying to persuade Members to seek a balanced outcome within the agriculture talks, while avoiding having the agriculture talks held hostage (or impede) other areas under negotiation.

A. Major Features of "Revised" Draft

Most of the changes in the revised draft are intended to benefit developing countries, including on tariff reduction, safeguards and preference programs. Some changes benefit developed Members like the EC, for example greater flexibility on animal welfare and "Blue Box" subsidy programs. We describe below some of the major changes in the revised draft.

1. Revised Formula for A*d Valorem* Tariff Reduction for Developing Countries

The revised paper adds a new tariff band under which developing country Members would have to reduce their import tariffs.[21] (*See* Paragraph 12)

2. "Special" and "Strategic" Products ("SPs") for Developing Countries

This new concept of "strategic products" ("SPs") introduced in the first draft would allow developing countries to undertake lower tariff reductions on a self-designated number of sensitive products related to food security, rural development and/or livelihood security concerns.

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[20] TN/AG/W/1/Rev.1, at paragraph 3.

[21] The Harbinson formula clusters tariffs into different categories and then applies reductions in a way similar to the Uruguay Round formula: all ad *valorem* tariffs are reduced by a simple average subject to a minimum reduction per tariff line.

The revised draft changes the term to "special" products and expands the scope of "SPs" – which can be defined at the 4-digit HS level, instead of 6-digit. (*See* Paragraphs 11 and 14)

3. More Flexibility on Tariff Preferences Granted by Developed Countries

The draft provides for more flexible phase-out periods that would allow developed countries to delay the implementation of their MFN tariff reduction commitments that erode long-standing tariff preferences (e.g. GSP, Lome Convention) accorded to certain developing countries' key exports. The revised draft (i) makes the definition of "product of vital export importance" more flexible; and (ii) introduces an obligation for developed countries to provide targeted technical assistance programs and other measures to support countries receiving preferences in order to diversify their economies and exports. (*See* Paragraph 16)

4. Two Safeguard Mechanisms Available to Developing Countries

The revised draft clarifies that two safeguard mechanisms would be available to developing countries: (i) continuation of the current special safeguard under Article 5 of the Agreement on Agriculture for products already covered and designated in Members' schedules; and (ii) a new special safeguard mechanism to take account of developing countries' needs, which would require further elaboration. The revised draft does not make any reference to the review of Article 5 to take into account development needs. (*See* Paragraph 26)

5. Further Consideration of Non-Trade Concerns

The revised draft stresses that non-trade concerns have already been taken into account in various sections (and not only in market access). However, the text also maintains previous wording requesting that Members consider these sensitive issues further. (*See* Paragraph 28)

6. Stronger Disciplines on Export Restrictions and Exceptions

The revised draft prohibits the introduction of new export prohibitions or restrictions on foodstuffs provided for in Article XI:2 (a) of GATT 1994 on quantitative restrictions by developed countries.[22] The previous draft explicitly exempts them, along with restrictions falling within Articles XI:2 (b); XX and XXI on general and security exceptions. The revised also states clearly that the new disciplines on export restrictions and taxes are not applicable to developing countries, which will benefit from the provisions of Article 12 of the Agreement on Agriculture. (*See* Paragraphs 39-40)

[22] Article XI:2 (a): "Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortage of foodstuffs or other products essential to the exporting contracting party."

7. More Flexibility on "Blue Box"[23] Subsidies

The revised draft introduces a more flexible formula to determine the base for reduction of direct payments under production-limiting programs, otherwise known as "Blue Box" subsidy programs. The draft requires that these programs "be capped at the most *recent* notified level and bound at that level," while the previous version referred to the "average level notified for the implementation year [1999-2001]." (*See* Paragraph 44)

8. Duty and Quota Free Access to Least-Developed Countries' Exports

The revised draft obliges developed countries to provide duty- and quota-free access to their markets for all imports from LDCs. (*See* Paragraph 55)

9. Faster Liberalization by New Members

The revised draft provides that recently acceded Members will have the flexibility to defer their respective implementation periods by [2] years. The previous draft provided that those Members would have the flexibility to begin the implementation of further commitments regarding tariffs, tariff quotas, export subsidies and trade-distorting domestic support [two] years following the expiry of the full implementation of their accession commitments. This new language might require liberalization for certain products prior to Members' accession commitments. For example, China is due to implement its commitments for certain products by 2010. The new wording would affect China, which will have to implement the new commitments on certain products earlier than what is was provided for in its Accession Protocol – assuming the Doha Round is completed well before 2010. (*See* Paragraph 56)

10. Inclusion of Payments for Animal Welfare Programs in the "Green Box"[24]

The revised draft adds to the eligible list of Green Box programs payments for animal welfare programs. Payments "shall be limited to the extra costs or loss of income involved in complying with the government program." (*See* Attachment 8).

[23] The "Blue Box" (Article 6.5) provides that direct payments under production reduction programs are exempted from reduction commitments if such payments are made on: 1) fixed areas and yields; or 2) 85 percent or less of the base level of production; or 3) they are livestock payments made on a fixed number of heads. Unlike under the "Green Box" subsidy programs, these payments are not decoupled from production, which is still required in order to receive the payments.

[24] The "Green Box" covers non-trade distortive support measures, which are exempted from the reduction commitments.

B. Harbinson Cites Need for Further Work on "Technical" Issues

Acknowledging the likelihood of failure to meet the March 31 deadline, Harbinson suggested in his revised draft the need for further work on "technical" issues. Apparently, Harbinson tried to temper the negative implications of missing the deadline by emphasizing the need for further work.

Harbinson's list of issues that would require further technical work include:

- Methodology to determine "special" (formerly "strategic") products;
- Disciplines on tariff quota administration, export credits, international food aid, and state trading enterprises;
- Establishment of a special safeguard mechanism for developing countries; and
- Possible amendments to criteria on "Green Box" subsidy programs

The EC reacted positively to Harbinson's proposal to address outstanding issues and insisted that discussion on non-trade concerns should be included in the continuing "technical" work. Harbinson's revised draft acknowledges that "further consideration needs to be given to non-trade concerns and other market access issues and the extent to which these issues should be taken into account in the modalities to be established and/or subsequent work."[25] The draft, however, does not indicate whether non-trade concerns are "technical" issues and presumably has separated them from other outstanding "technical" issues.

The resolution of Harbinson's outstanding issues would require substantial technical work and political will. Moreover, some Members have criticized the distinction between "technical" and other outstanding issues (e.g. non-trade concerns) as being unclear. In addition, many of the issues in Harbinson's list are very controversial and would require major political decisions (e.g. SPs, disciplines on export credits, and revision of Green Box criteria).

III. Major Reasons for the Present Failure on Modalities

Many proponents of agriculture reform, especially developing countries, insist that the new "Doha Round" must result in meaningful liberalization. In Doha, Members agreed to continue the "reform program" initiated with the Uruguay Round, which should lead to "the long-term objective referred to in the Agreement [on Agriculture] to establish a fair and market-oriented trading system."[26] Proponents of reform, including most developing countries, hope that the new round will impose stronger disciplines on agricultural distortions and bring the sector in line with industrial goods trade. The recent failure on establishing modalities, however,

[25] WT/MIN(01)/DEC/1, at paragraph 28.

[26] WT/MIN(01)/DEC/1, at paragraph 13.

indicate that the reform process is politically hampered. As a result, many reformists fear that the current round will create additional exemptions or loopholes to agricultural disciplines.

Member's current failure to establish modalities stems from their efforts to accommodate protectionist sectors by seeking new exemptions for existing disciplines, or by delaying the liberalization process. Both developed and developing countries are at fault for delaying the reform agenda. On the one hand, many developed countries (e.g. EC, Japan, Norway, Switzerland, and the US) devote considerable resources to support their agriculture sectors and hence have domestic constituents that are keen to maintain these protections. On the other hand, many developing countries are reluctant to make further concessions and complain that they have yet to realize gains from the previous round. It is also worth noting that for some issues, Members shift alliances and do not negotiate as traditional blocs. Major alliances such as the Cairns Group[27] are not as monolithic as they were in previous rounds.

Finally, some Members in the reformist camp, which traditionally comprises the Cairns Group and to a certain extent the US, point out that the current deadlock is due in part to a lack of leadership among reformers. Australia, which has traditionally led the Cairns Group, seems more cautious to adopt a hard line on reform, making the Cairns Group much less vocal and focused than before. At the same time, many Members believe that the EC has yet to reach an agreement on CAP reform before new members of the EU accede. The EC proposes a total decoupling from production of direct payments to farmers, but faces resistance by Member States such as France. The EC's ability to initiate such reforms would allow it to agree to more ambitious reductions in trade-distorting domestic support.

OUTLOOK

Not surprisingly, Members missed the critical but missed the critical, but not "make or break" deadline on agriculture. Some pessimists feared the breakdown of negotiations in agriculture as well as negative implications for other negotiations. Nevertheless, Members managed to salvage existing work late on March 31 at the closing meeting of the Agriculture Committee. Members agreed to submit to the Trade Negotiations Committee for approval on April 4 a work program for the months prior to Cancun. Clearly, technical work on modalities will continue.

Harbinson indicated his "revised" draft did not differ much from the first draft, and it was inevitable that Members would reject it. Harbinson even acknowledges that many areas of work remain, whether "technical" or other outstanding issues. Harbinson's text, however controversial, is far reaching and will provide a basis to reach a compromise on modalities. In any case, most observers believe that modalities on agriculture will not be established without high-level political intervention – perhaps by ministers meeting in Cancun.

[27] The Cairns Group is a coalition of 17 agricultural exporting countries that favors a genuine market-oriented approach to agricultural policies. Members of the Group are: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, the Philippines, South Africa, Thailand and Uruguay.

It must be understood that the agriculture modalities are critically important and far more substantive than, for example, modalities for services and industrial goods. The modalities for agriculture will to a considerable extent decide the outcome of the agriculture negotiations – so much so that once the modalities are agreed it might be possible to wrap up the negotiations within less than a year. Experienced agriculture negotiators do not find it surprising that agreement cannot be reached at this stage without compelling external force or political will (e.g. EU CAP reform or expiration of TPA in the US).

The current delay on establishing modalities for agriculture, though it had been expected, will have repercussions in other areas of the Doha agenda and in the preparations for the Cancun Ministerial. Therefore, it is critical that Members strive to agree on modalities for agriculture no later than Cancun. A failure to do so would undermine, and possibly derail other negotiations.

First Harbinson Draft on Agriculture Modalities Moves Debate Forward at the WTO; Provokes Dissatisfaction Among Reformists and Opponents

SUMMARY

Stuart Harbinson, Chairman of the Negotiating Group on Agriculture on February 12, 2003 circulated a first draft of modalities to the Special Session of the Committee on Agriculture (COA) in an attempt to conclude modalities by the deadline of March 31. The "Harbinson draft" was timed to move negotiations forward at the Tokyo Mini-ministerial (February 14-16, *Please see related report*) and reflects a balanced, but controversial approach to liberalization in this sensitive sector. Prior to this, Harbinson circulated on December 18, 2002 an overview paper summarizing Members proposals to date.

The Harbinson draft proposes liberalization targets and disciplines for the "three pillars" of negotiation and places special attention to developing country concerns:

- ***Market access*** – Formulas for tariff reduction; expansion of tariff rate quotas; but little mention of non-trade concerns.

- ***Export competition*** – Gradual elimination of export subsidies; stronger disciplines on state-trading enterprises, export credits and food aid.

- ***Domestic support*** – Reductions in domestic support (e.g. green, blue and amber box subsidies) and de minimis support.

- ***Developing country provisions*** – More flexible provisions on tariff reductions and subidy programs; safeguard mechanism; and new proposal on "Strategic Products."

WTO Members debated the Harbinson draft at the COA on February 24-28, but showed no signs of agreement on modalities. The major reformists (e.g. Cairns Group and US) and opponents (e.g. EC and Japan) to liberalization and their constituents have criticized the draft as either having gone too far, or not far enough. Harbinson expects to table a revised draft on modalities by mid-March, and Members will attempt to reach an agreement (however unlikely) at the next COA on March 25-31.

ANALYSIS

I. Overview Paper Outlines Discussions to Date

A. Harbinson Circulates Overview Paper in December

On December 18, 2002, Chairman of the Negotiating Group on Agriculture Stuart Harbinson circulated an overview paper summarizing the various Members' proposals on agriculture and suggested areas to focus work (two days after the EC submitted its modalities proposal).[28] The overview paper identifies "key issues which require immediate attention and work as there is an urgent need for convergence," as described below.[29]

- ***General objectives unclear*** – Gaps in interpretation of Doha Ministerial Declaration paragraph 13 on general negotiating objectives.[30]

- ***Counterproposals lacking*** – Lack of substantive counter-proposals and inconsistent levels of detail in various modalities proposals.

- ***S&D provisions disagreements*** – Significant differences with regard to appropriate provisions for special and differential treatment.

- ***Non-trade concerns*** – Differing approaches on the extent and methods of incorporating non-trade concerns such as food security, livelihood and poverty alleviation, rural development, protection of the environment, food safety, and animal welfare.

- ***Overt linkages*** – Overt links by some Members between the agriculture negotiations and progress in other areas of negotiation.

B. Market Access: Formula and Pace of Reductions

1. Tariff Reductions: Two Formulas Considered

Members are divided in their support of two approaches to tariff reduction: (i) harmonization or "Swiss" formula resulting in steeper cuts; and (ii) the Uruguay Round formula, which is less ambitious. The harmonization or "Swiss" formula proposes a coefficient of 25 over

[28] Overview: Negotiations on Agriculture, TN/AG/6, 18 December 2002.

[29] Ibid. para. 4

[30] Paragraph 13 reads in relevant part: "We recall the long-term objective referred to in the Agreement [on Agriculture] to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support … commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support." Doha Ministerial Declaration, Adopted on 14 November 2001

a 5-year implementation period[31] with a built-in provision for special and differential treatment. The UR formula proposed reductions of 36 percent average and 15 percent minimum for developed countries, and a 24 to 10 percent ratio for developing countries.

The Swiss formula's main supporters are the Cairns Group of agriculture exporting countries, the US, and the Like-Minded Group (LMG)[32] of developing countries. Critics like the EC and Japan believe the Swiss formula timetable is inequitable in favor of those Members with low tariffs. The Swiss formula also has the disadvantage of requiring the conversion of specific tariffs into ad valorem ones – a process that can require approximation. The Uruguay Round formula in contrast is linear and the same percentage reductions (e.g. 36-15 percent; 24-10 percent) are targeted regardless of the starting tariff rate. This formula allows variations for specific products so long as a simple average across all products meets the target reduction rates.

The overview paper encourages more detailed proposals on both formulas, but leaves open the possibility of a third option as a compromise.

2. Tariff Quotas: Mixed Views on Expansion of Quotas

WTO Members are divided on whether to expand import volumes under existing tariff quotas. The scope of this expansion is contingent on whether Members would agree to increase final bound tariff quotas, and whether to hinge domestic consumption in a representative period to the expansion levels. Furthermore, Members must reach agreement on whether in-quota tariffs should be reduced to zero.

Developing countries largely oppose expansion of import volumes and rely on in-quota tariffs to sustain their development, trade, food security and budgetary needs. The Cairns Group countries, the US and China seek expansion of tariff rate quotas and progression towards a tariff-only regime. Countries like Japan and Korea seek to reduce some quotas to reflect recent representative levels of domestic consumption. The position of the Cairns Group is not monolithic since Australia opposes any narrowing of the quotas.

3. Reform of the Special Safeguard Mechanism

Members are at odds over whether to eliminate or reform the special safeguard provisions of Article 5 of the Agreement on Agriculture. The LMG, for instance, favor a new special safeguards mechanism, which currently applies only to products on which Members have converted non-tariff barriers to customs duties in the Uruguay Round.[33] The LMG also seek

[31] This 25% co-efficient signifies that, after a period of five years, the highest tariff would be at 25%.

[32] The LMG is an informal grouping of developing countries with common positions. The following countries are usually identified with the LMG: Cuba, the Dominican Republic, El Salvador, Haiti, Honduras, Kenya, Pakistan, Sri Lanka, Uganda and Zimbabwe.

[33] This process of converting non-tariff market access restriction to tariffs is known as 'tarrification'.

more flexible provisions available to developing countries. Developing countries "tarrified" (conversion of quotas and other restrictions to tariffs) relatively few products in the Uruguay Round.

The Cairns Group is not entirely opposed to the special safeguards, but has not made its position clear. Beyond these groupings, Argentina, Indonesia and the Philippines have raised the idea of a Special and Differential Countervailing Measure, but the lack of an injury test makes this difficult for the US and the EC to accept.

4. Disciplines on State Trading Enterprises

The overview paper calls for further technical work concerning the notification and transparency of state trading enterprises. Not all Members back the need for new disciplines in this regard, including Canada and others who maintain STEs.

5. Other Issues: Debate Over GIs

As for other issues, the EC has proposed that a registration system for agricultural geographical indications ("GIs") be included in agriculture negotiations. Most Members, and even Switzerland (which also favors extension of some geographical indications) prefer that Members limit discussion of GIs in the TRIPS Council and not through agriculture negotiations.

C. Export Competition: Disciplines on Subsidies and Credits

1. Export Subsidies: Point of Considerable Contention

Members are divided on the level and extent of reductions in export subsidies. The Cairns Group, with support from some developing countries, seeks a complete phase-out of export subsidies within three years, and six years for developing countries. The Cairns Group also suggests an up-front reduction of 50 percent. The Cairns Group and the LMG disagree on the LMG's right to exemptions in reduction of export subsidies on the basis of Article 27 and Annex VII of the Agreement on Subsidies and Countervailing Measures (for countries whose GNP falls below $1000). The US has proposed a five-year phase-out period without an up-front reduction. The EC is adamant against elimination of export subsidies, but is offering a reduction of 45 percent.

2. Export Credits: Stronger Disciplines Favored

There is strong support among Members for strengthening disciplines on export credits, export credit guarantees and insurance programmes – in order to establish a rule-based regime. The US and the Cairns Group countries seek a system under which credits are available on commercial terms. Switzerland and Norway prefer a system which subjects non-commercial credits to the same reduction commitments as export subsidies. Nevertheless, the US is not as eager to discipline export credits to the extent advocated by certain other Members.

D. Domestic Support: Shifting Between Green, Blue and Amber Boxes

1. Green Box: Definition and Limits Considered

Green Box support is based on Annex 2 of the Agreement on Agriculture and consists of non-trade distorting and minimally trade-distorting measures. The scope of the negotiations includes setting limits on Green Box provisions, and how to implement changes to Annex 2 of the Agreement on Agriculture so as to address the concerns of developing countries and non-trade concerns.

The so-called "Friends of Multifunctionality" – EC, Japan, Korea, Norway, Switzerland and Mauritius – propose inclusion of non-trade measures in the Green Box, including environment, rural development, food security and animal welfare. The Cairns Group is the chief opponent to this approach, claiming that the expansion of the Green Box measures would result in trade distortions. Both the Cairns Group and India seek a formal cap on Green Box spending and limits on specific types of programs.

2. Blue Box: Growing Contention

Members are debating reform of Blue Box provisions, including whether Article 6.5 of the Agreement on Agriculture should be retained or eliminated, and whether Article 6.5 payments should be capped or reduced. Some Members like the EC have increased their use of the Blue Box, which contains few disciplines.

3. Amber Box: Debate Over Scope and Pace of Phase-Out

The discussion on the Amber Box provisions involves how to reduce bound Aggregate Measure of Support (AMS) commitments and whether or not to reduce on a product-specific basis vs. non-specific programs, and special provisions for developing countries.

The Cairns Group, the US, China and India, among others, advocate the elimination of Amber Box provisions at least for developed countries that exceed the permitted support level of five percent of agricultural production. China proposes a three-year phase out, while the Cairns Group and Turkey propose five years. The Friends of Multifunctionality, in turn, propose the less ambitious target of 55 percent reduction and not outright elimination – citing that the Doha Round mandates "substantial reductions" only.

E. Developing and Least-Developed Countries' Concerns

Given the delicate nature of agriculture negotiations in the larger context of the Doha Round, there is generally broad support for more flexible reduction and phase-out periods for developing and lest-developed countries. Special and differential treatment is becoming more prevalent as newly acceded countries and small, vulnerable economies ("SVEs") insist on special treatment beyond the traditional measures. Nevertheless, some countries like Bulgaria have called for defining the parameters for special treatment, such as level of development and per capita income.

II. Draft Modalities Paper Attempts to Move Debate Forward

Chairman Harbinson circulated the first draft on agriculture modalities on February 12 in order to encourage debate at the Tokyo Mini-Ministerial (February 14-16), and to prepare for negotiations at the Special Session of the COA held on February 24-28. Harbinson indicated that the draft is "no more than a first attempt to identify possible paths to solutions."[34]

The draft generally follows the outline of the overview paper in suggesting modalities for the three major negotiating issues (i) market access; (ii) export competition; (iii) domestic support; and highlights special and differential treatment in each of these areas. The draft contains bracketed text on certain issues, including target rates and years, to indicate areas to reach agreement. We discuss the draft's approach to these three major issues below.

A. Market Access: Modest Reduction Formulas and Targets

1. Tariffs: UR Formula on Average Reductions Proposed

The draft calls for reductions of all tariffs by a simple average (except in-quota tariffs) subject to a minimum reduction per tariff line. The reductions would be applied over a period of five years for developed and ten years for developing countries:

	Tariff Range	**Minimum Reduction**	**Average Reduction**
Developed	0-15%	25%	40%
	15-90%	35%	50%
	>90%	45%	60%
Developing	0-20%	17%	27%
	20-120%	23%	33%
	>120%	30%	40%

By clustering the tariffs into the above three categories, the Harbinson draft rejects the Swiss formula and is closer to the Uruguay Round formula. The Swiss formula would have entailed a greater reduction to the higher tariffs rather than an average cut. Also, where a Member's tariffs are expressed in non-*ad valorem* terms, reductions shall be based on tariff equivalents using the 1999-2001 period as the representative period.

[34] First Draft of Modalities for the Further Commitments, JOB(03)/23, Circulated on 12 February 2003, para. 3

The draft introduces a new and more flexible approach for developing countries' "Strategic Products" ("SP"); products with respect to food security, rural development and/or livelihood security concerns. Developing countries would have the right to carve out SPs from the liberalization targets above. The identification and coverage of SPs is left for further elaboration.

- The Cairns Group and US have criticized the draft's approach to tariffs as not ambitious and ineffective on extremely high tariffs (e.g. a 400 percent tariff reduced to half is not acceptable). The approach favors the EC since average reductions are slightly higher than it proposed (i.e. 60 vs. 55 percent), and since the EC (and Japan) maintains prohibitive tariffs on certain products.

2. Preferential Schemes: More Flexible Phase-Out Periods

The draft provides additional flexibility for developed countries' tariff preferences which are of "vital export importance" for developing countries. Members can implement tariff reductions in eight years rather than five years for products that account for at least 25 percent of total export of the beneficiary country (based on a three year average).

- The added flexibility for preferential arrangements is important to the EC, which maintains product-specific preferences to developing countries like the ACP (African Caribbean Pacific) group.

3. Tariff Quotas: Gradual Increase in Volumes

The draft presents two options on increasing volumes of tariff quotas for developed countries, over the next five years:

(i) Increase TRQ volume to 10 percent of current consumption; or

(ii) Increase TRQ volume to only 8 percent of current consumption, but balance with other TRQ increase to 12 percent of current consumption.

Developing countries have greater flexibility and would be required to increasing TRQ volume to 5 percent of current consumption, and corresponding consumption to 8 percent. They are not required to expand TRQs for SPs, but for other products are required to expand quota volumes to 6.6 percent of domestic consumption if the former is currently lower than that volume. The implementation period of ten years is twice as long as that for developed countries.

The draft also requires developed countries to provide duty free access for tropical and other products that encourage diversification of production from the cultivation of narcotics and lawful products that are recognized by the World Health Organization (WHO) as being harmful to human health. The latter is a veiled reference to tobacco and is considered relatively controversial – and reference to the WHO appears in brackets.

- The US proposed a 20 percent overall increase in TRQ volume, and is disappointed by the less ambitious targets. Developing countries are divided on their positions as many are resistant to increasing TRQ volumes.

4. Special Safeguard Measures: Elimination and Reform

The text proposes the elimination of the special safeguard mechanism for developed countries at the end or two years after the end of the implementation period, and a revised mechanism for developing countries (Article 5 of the Agreement on Agriculture). Developing countries will be allowed to apply the safeguards only to SPs, and the mechanism will be reviewed to account for their development needs.

- Some developing countries are keen to have recourse to the safeguards after it is no longer available to developed countries. Nevertheless, some developed countries like the US question the need for the mechanism.

5. State Trading Import Enterprises: Stronger Disciplines

The draft includes an annex that outlines provisions for reforming Article 4.3 on disciplines for state trading importing enterprises. The proposed paragraph would ensure that these enterprises do not act to nullify or impair the benefits of market access concessions.

6. Other Market Access Issues: Dismissal of Non-Trade Concerns

The draft makes little mention of non-trade concerns and only refers to discussion in the overview paper (paragraph 28). The draft simply asks that participants consider non-trade concerns further.

- The Friends of Multifunctionality (EC, Japan and others) are not pleased with this apparent omission on non-trade concerns as they had hoped for flexibility on trade measures applied for environment, food security, animal welfare and other reasons. The Cairns Group, US and many developing countries believe non-trade concerns should not result in trade distorting measures, and are resistant to their inclusion in the negotiations.

B. Export Competition: Relatively Ambitious Targets and Disciplines

1. Export Subsidies: Gradual Elimination

The draft sets forth rather ambitious targets on reducing and gradual elimination of export subsidies provided by developed and developing countries:

Developed Members	Using a coefficient of 0.3 and an implementation period of 5 years, the formula seeks to reduce budgetary outlays and subsidized quantities to zero for at least 50 percent of the aggregate final bound level of budgetary outlays for all products subject to export

	subsidy commitments. For the remaining products, the end result is the same but with an implementation period of 9 years and a coefficient of 0.25.
Developing Members	Using a coefficient of 0.25 and an implementation period of 10 years, the formula seeks to reduce budgetary outlays and subsidized quantities to zero for at least 50 percent of the aggregate final bound level of budgetary outlays for all products subject to export subsidy commitments. For the remaining products, the end result is the same but with an implementation period of 12 years and a coefficient of 0.2.

The formula for reductions is as follows:

Budgetary outlay or quantity (in year j) = Budgetary outlay or quantity (in year j-1) – (coefficient multiplied by the Budgetary outlay or quantity (in year j))

The constant coefficient is simply the amount by which the export subsidy will be reduced at the end of the first year of implementation. A 100 percent budgetary outlay with a coefficient of 0.15, thus would be reduced to 85 percent in the following year, and 72.3 percent the year thereafter.

- The US and Cairns Group are supportive of the approach leading to complete elimination of export subsidies, but note that the phase-out period is longer than they had hoped. The EC is resistant to any complete elimination of export subsidies and supports only partial reductions.

2. Export Credits: New Disciplines

The draft includes an annex that proposes a new Article 9 *bis* or 10 *bis* of the Agreement on a rules-based approach to disciplining export credits. The proposed article requires that Members not provide export credits other than on market-oriented terms and conditions. The article defines export credits (e.g. direct financing support, risk cover, and government-to-government credit agreements); sets out terms and conditions (e.g. repayment terms, interest rates, premiums, and foreign exchange risks); provides for emergency exceptions; sets out notification requirements; and provides more flexible terms for developing countries.

- The Cairns Group and EC agree on stronger disciplines on export credits. The US is generally supportive of disciplines, but the draft disciplines are stronger than the US had proposed or expected.

3. Food Aid: New Disciplines

The draft sets out new disciplines on Members' food aid programs by replacement of paragraph 4 of Article 10 of the Agreement. The proposed language defines conditions for food aid, including through untied financial grants. Countries receiving food aid should not re-export such aid unless authorized by the UN.

- The US has criticized these proposed disciplines as too strict and that it would undermine food aid offered in collaboration with private aid groups. Recipient countries favor untied aid and in grant form.

4. State Trading Export Enterprises: Stronger Disciplines

The draft proposes tighter disciplines on state trading export enterprises by proposing a new Article 10.5 of the Agreement on Agriculture. The proposed text, which is more detailed than the text for state trading import enterprises, aims to ensure that STEs do not, in effect, circumvent export subsidy commitments or nullify or impair the conditions of competition in world export markets. Further conditions are described below.

- STE exports must not occur at a price less than the price paid by such an enterprise to the domestic producers;
- Members must not restrict the right of any interested entity to export, or to purchase for export, agricultural exports; and
- Members must not grant special financing privileges, including government grants, loans, loan guarantees, or underwriting or operational costs, to government export enterprises that export for sale, directly or indirectly, a significant share of the respective member's total export of an agricultural product.

The recent dispute between the US and Canada over the Canadian Wheat Board has highlighted the need for stronger disciplines on STEs. The US filed a request for consultations on December 17, 2002 claiming that the Canadian Wheat Board discriminates against foreign suppliers in violation of Article XVII of the GATT 1994. The US also claims that Canada's policies for handling imported grains in terms of storage in grain elevators are inconsistent with the national treatment obligations of the GATT, and Article 2 of the TRIMs Agreement.

- Canada, which maintains a STE for wheat (Wheat Board) opposes stronger disciplines. Canada's trade minister Lyle Vanclief stated recently that Canada had "fundamental difficulties" with the draft on STEs. The US and EC are united in seeking stronger disciplines on STEs.

C. Domestic Support: Reduction Targets and Caps

1. Green Box (Annex 2 of the Agreement): Stronger Disciplines, No Caps

The draft proposes modified criteria in Annex 2 of the Agreement on Agriculture to strengthen disciplines on "green box" permissible subsidies, but no new caps. For example, the draft proposes tightening structural adjustment assistance through greater definition of such programs and time limits. The draft also proposes fixed and unchanging historical base periods relating to direct payments, decoupled income support, and payments under regional assistance programmes. Interestingly enough, the text acknowledges animal welfare programs under "payments in connection with the veterinary treatment of animals." The text also offers developing countries exemptions in the course of calculating payments for rural viability and food security.

- The Cairns Group supports stronger disciplines and caps on all domestic support, including green box subsidies, and is somewhat disappointed by the proposed disciplines. The EC is supportive of the text's approach and encouraged by the mention of animal welfare.

2. Developing Country Programs (Article 6.2 of the Agreement): More Flexibility

The draft proposes possible changes to Article 6.2 of the Agreement on Agriculture by offering developing countries exemptions from domestic support reductions if expended in aid to low-income farmers, diversification away from narcotics or agricultural cooperatives, or other social policies.

3. Blue Box (Article 6.5 of the Agreement): Disciplines and Caps

The draft proposes stronger disciplines and reduction of "blue box" subsidies that provide direct payments under production limiting programs, which is seen as increasingly abused by the EC. Such direct payments, under Article 6.5 of the Agreement on Agriculture, are to be capped at the average level notified for the implementation years 1999-2001 and bound at that level. These payments are to be reduced by 50 percent over a 5-year implementation period through equal annual installments; or folded back into the amber box (AMS support). For developing countries, the implementation period envisaged is ten years with a reduction rate of 33 percent.

- The EC is particularly resistant to disciplines and reductions in blue box subsidies, including folding the exemption back into the amber box. The Cairns Group and US are encouraged by possible disciplines and the introduction of caps in the blue box, which they consider a loophole for domestic support used increasingly by the EC.

4. Amber Box: Achievable Reduction Targets

The draft proposes ambitious reduction of amber box subsidies for total bound AMS, by 60 percent in equal annual installments over 5 years, and by 40 percent over 10 years for developing countries. The draft modalities further envisage an amendment of Article 6.3 of the Agreement on Agriculture so as to ensure that the AMS for individual products does not exceed the respective levels of such support provided on average of the years 1999-2001.

- The EC is willing to compromise on reductions in the amber box since it is moving many subsidy programs to the blue box. The EC even offered a 55 percent reduction, which is close to the 60 percent target proposed by the draft. The US and Cairns Group are encouraged by the draft's product-specific caps and reduction targets, but would have preferred a more ambitious approach.

5. De Minimis Support (Article 6.4): Unusual Alliances

The draft proposes a new effort to reduce de minimis support below the 5 percent level (of total value of production for an agricultural product and non-product specific support), which currently is not disciplined. The draft proposes an annual reduction of 0.5 percent over the next five years. The draft proposes to retain the current 10 percent threshold, for product specific and non-product specific domestic support respectively for developing countries. Furthermore, developing countries may have the right to transfer credits of unused product specific support to the non-product specific column.

- The Cairns Group and EC are on the same side in supporting reductions (50 percent in this case) in de minimis support, which is used most by the US and Japan. The US will come under the most pressure to reduce minimis support, but has stated it is willing to reduce these levels if the EC reduces support in other areas.

III. Draft Modalities Paper Criticized by Reformists and Protectionists; Gains Some Support from Other Members

Harbinson's first draft on modalities attempts to strike a compromise between the contending camps (reformists and protectionists), but has provoked considerable dissatisfaction between the two over the three key issues of (i) market access; (ii) export competition; and (iii) domestic support. Trade ministers in Tokyo, upon review of the draft acknowledged it as a catalyst to move negotiations forward, but criticized it roundly. For most issues, the US and the Cairns Group would have preferred more ambitious liberalization targets; the EC, Japan and its supporters on the other hand, argue that the demands are too ambitious.

Regarding market access, the US and Cairns Group have complained that for very high tariffs in the EC and Japan (e.g. meat and rice products), the reduction formulas would have little effect. They also criticize what they perceive as a timid approach to TRQ expansion. Moreover, the draft's passing reference to non-trade concerns is unacceptable to the EC. The EC, Japan, Korea and Mauritius will continue to demand across-the-board consideration of non-trade concerns. Developing countries, however, are encouraged by a more flexible approach to liberalization for their sensitive or "Strategic Products." (SPs)

Regarding export competition, the debate at the Doha Ministerial on export subsidies – a key issue to concluding the Declaration at Doha – is replayed, and concerns whether or not to pursue complete elimination of export subsidies. The draft calls for elimination but with a longer phase out period than hoped for by the US or the Cairns Group. The EC, however, is adamant in

resisting any demand for complete elimination. The draft's disciplines on export credits and food aid are also controversial, and less flexible than expected by the US.

Regarding domestic support, the compromises will be difficult for opponents and proponents as they tackle subsidies commonly used by the EC, Japan and the US in particular. The EC is willing to compromise in the amber box by proposing a 55 percent reduction, and is not too displeased by the proposed 60 percent reduction. The blue box will be far more contentious as the EC is the chief user and is shifting programs to the blue box from the amber box. Farm Commissioner Franz Fischler has argued the blue box is far less distorting and amber box disciplines should not apply. He cited OECD reports stating that amber box provisions are approximately four times more trade distorting than blue box ones. The proposed reductions to de minimis thresholds (or loopholes) will result in unusual alliances pitting the EC and Cairns Group against the US and Japan.

Among other Members, the draft has received support from two key players who do not belong to the traditional camps: China and India. While neither Member approve of the draft in its entirety – something which is not realistic at this stage anyways – both Members have expressed their support for the draft. China, which was forced to forego the use of export subsidies in the course of its accession, seeks to phase out their use by other Members.

OUTLOOK

At the recent negotiating session of the COA, Chairman Harbinson sought guidance from Members in order to prepare a revised version of the draft modalities. Members' positions, however, remained entrenched, indicating little hope for an agreement by March 31. About 50 Members made comments in support, or criticism of the draft on the first day of the COA meeting on February 24. Key players such as the EC and US did not budge from their established positions even in the informal plurilateral and bilateral meetings that week. As a result, the conclusion of the latest session resulted in almost no convergence in Members' views on negotiating modalities. Harbinson is due to release a second draft modalities text in mid-March (reportedly by March 18), but his task is complicated due to the lack of constructive negotiations on the first draft. The deadlocks indicate that Members might have to extend the March 31 deadline, and risk yet another high-profile failure (after missed deadlines on TRIPS and Public Health, and S&D provisions in December 2002).

The current deadlock requires the highest level of political intervention and more time than is left this month. The EC's negotiating position, for example, would require a new mandate from its Member States after extensive consultations on reform of the Common Agricultural Policy. France in particular opposes any changes to the CAP and any linkages between CAP reform and the Doha negotiations. Still, some encouraging signs have appeared, including French President Chirac's urging on February 21 that developed countries initiate a moratorium on export subsidies in relation to Africa.

The breakdown of negotiations at the COA March 25-31 session could delay an agreement until a crisis hits the Cancun Ministerial in September. Unfortunately, the lack of progress on agriculture will certainly affect the rest of the Doha agenda and undermine

negotiations on services (initial offers in March 2003), industrial goods, rules and the Singapore issues (i.e. investment, competition, trade facilitation and transparency in government procurement). Moreover, developing countries place the highest priority on meaningful agriculture liberalization and will become more discouraged by this failure at the WTO than any to date.

WTO Members Step Up Negotiations on Industrial Market Access; Differences on Environmental Goods More Apparent

SUMMARY

The Negotiating Group on Market Access at its recent meeting on February 19-21, 2003, stepped up their discussion of modalities for market access on non-agricultural products. Members at the latest session reviewed two overview papers and new proposals from Thailand and a group of African countries. Members are striving to reach a "common understanding" on a possible outline for negotiating modalities by March 31, and to conclude modalities by May 31, 2003.

Concerning market access for environmental goods, a statement dated February 14 by the WTO Secretariat highlights the divide between Members on the issue. The Director of the WTO's Market Access Division Carmen Luz Guarda recently commented that two opposing camps have formed on the issue of environment goods, in the context of (i) treatment; (ii) definition; and (iii) potential beneficiaries from liberalization. Nevertheless, a recent submission by Qatar is viewed as helpful to move the process forward.

The debate on environmental goods is seen as driven by developed country Members, who are viewed as the main beneficiaries of liberalization in products with relatively high technological content. Developing countries, many whose priority is to achieve meaningful liberalization in agriculture, will likely hold up progress in environmental and industrial goods negotiations without parity in agriculture (modalities deadline by March 31, 2003).

ANALYSIS

I. Negotiating Group on Market Access Considers Overview Documents and New Proposals

The recent meeting of the Negotiating Group on Market Access on February 19-21, 2003 stepped up its efforts in order to make up for lost time due to last year's disagreement over the deadline for modalities (not reached until July 2002). At the end of 2002, the Members issued 14 proposals, and 18 proposals have been issued to date.

The Chairman of the Negotiating Group and the WTO Secretariat, in an effort to provide a coherent framework for the negotiations, produced two overview documents of proposals to date. The first document provides a consolidated overview[35] of the proposals on modalities. Members' proposals generally follow three approaches: (i) formula; (ii) harmonization; and (iii) "request offer." (*Please see our prior reports on this topic*)

[35] Negotiating Group on Market Access, Overview of Proposals Submitted, TN/MA/6, 5 February 2003

The Chairman also circulated an informal note on February 12[36] that highlights the main outstanding issues in the market access negotiations. These issues, which were also identified in the paper entitled "Overview of Proposals Submitted" (TN/MA/6), are described below.

- ***Product coverage*** – Should modalities contain or refrain from *a priori* exclusions?
- ***Elimination of tariffs*** – Would modalities result in the elimination of tariffs?
- ***Tariff peaks, tariff escalation and high tariffs*** – How to tackle tariff peaks and high tariffs in general, and for particular products and sectors?
- ***Base rates*** – Should work begin on the basis of bound rates (vs. applied tariffs)? How to consider unbound tariff rates?
- ***Implementation periods*** – What time frames and phase out periods, and extent of flexibility for developing countries?
- ***Non ad valorem duties*** – How to consider modalities for non *ad valorem* (specific) duties?

The Negotiating Group also reviewed new proposals from Thailand, and a joint proposal from an African Group of countries Ghana, Kenya, Nigeria, Tanzania, Uganda, Zambia and Zimbabwe.

A. Thailand Favors Formula Approach

Thailand's proposal adopts the "formula approach" (i.e. an agreement on a specific formula to implement tariff cuts) as the "appropriate solution to achieve the negotiation objectives as mandated by the Doha Ministerial Declaration."[37] Thailand also accepts as complementary other approaches including "zero-for-zero" on a voluntary basis for important exports of developing countries, and the "request-offer" method. The request-offer method is Thailand's preferred method for reducing non-tariff barriers.

On other issues including tariff peaks and high tariffs, Thailand seeks to define those terms more closely. Concerning the starting point for negotiations, Thailand supports using the bound rate from the Uruguay Round. Regarding environmental goods, Thailand does not deem environmental goods worthy of an special treatment: "the most practical approach would be to treat environmental products in the same manner as other products under negotiations in the Non-Agricultural Market Access Group."[38]

[36] Negotiating Group on Market Access, Informal Note by the Chairman, Job(03)/27, 12 February 2003

[37] Negotiating Group on Market Access, Communication from Thailand, TN/MA/W/26, 17 February 2003, para. 5

[38] Ibid. para. 15

B. Africa Group of Countries Warn Against Complicated Approaches

A proposal from an African Group of countries (Ghana, Kenya, Nigeria, Tanzania, Uganda, Zambia and Zimbabwe) stated no preference of any modality, but cautioned that "complicated formulae will only burden the weaker customs administrations."[39] The proposal emphasizes the reduction and elimination of non-tariff barriers, tariff peaks and tariff escalation, particularly on products of export interest to developing countries. The Group also asserted that bound rates (from the UR) are the "only legitimate basis for making WTO commitments."[40]

Regarding environmental goods, the proposal defers to "the expert input of the Committee on Trade and Environment before embarking on the elaboration of modalities for this class of merchandise."[41] The Group also expects a significant emphasis on special and differential in any discussion on market access in general, and on environmental goods.

II. Environmental Goods Debate: Two Opposing Camps

The Doha Declaration provides for negotiations on environmental goods, which should be conducted in the Negotiating Group on Market Access for Non-Agricultural Products.[42] The Declaration also provides that the Committee on Trade and Environment (CTE) should act as a forum to identify and debate environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.

On February 14, 2003, the Director of the WTO's Market Access Division, Carmen Luz Guarda, submitted a statement at the Regular Session of the Committee on Trade and Environment on the state-of-play of negotiations on market access for environmental goods. In Geneva, some delegations have raised the idea of considering environmental goods in the context of technology transfer to build support for the issue among developing countries. The prospect for developing countries of receiving the know-how for high technology products makes the end-use approach more acceptable than a process and production defining method ("PPMs"). The recent proposal by certain African countries (discussed above), for instance, highlights this opposition to the PPM approach as being "futile"[43] in the face of a lack of a definitive definition of environmental goods.

A. Key Issues Debated by Two Opposing Camps

[39] Negotiating Group on Market Access – Communication from Ghana, Kenya, Nigeria, Tanzania, Uganda, Zambia and Zimbabwe, TN/MA/W/27, 18 February 2003.

[40] Ibid. para. 10.

[41] Ibid. para. 15.

[42] Doha Ministerial Declaration, WT/MIN/(01)/DEC/1, 20 November 2001, para. 31 (iii) reads: "With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on: […] (iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services."

[43] Supra at note 5. para. 15

The WTO's Guarda outlined the positions of Members and cited generally two opposing camps in negotiations on environmental goods. Guarda, however, did not identify the proponents and opponents in the discussion on environmental goods. Their respective positions on (i) treatment; (ii) definition; and (iii) potential beneficiaries are summarized as follows:

Treatment of environmental goods.	
Proponents	Doha Declaration in para. 31 (iii) provides for special treatment to environmental goods in the form of, for example, deeper tariff cuts.
Opponents	No distinction should be made between goods (like product approach).
Definition of environmental goods.	
Proponents	Members disagree over the criteria to be used for defining environmental goods: - production and process methods, or - end-use criteria.
Opponents	A definitional exercise is not required at this stage. Priority should be given to reaching agreement on modalities for the reduction of tariffs on all goods. After moadalities are established, Members can assess whether additional reductions are necessary on environmental goods.
Beneficiaries from liberalization in environmental goods	
Proponents	Win-win-win situation for trade, the environment and development.
Opponents	Developed countries will be the only beneficiaries of liberalization in environmental products because of their high technological content. Some Members referred to the need of easier access to environmental technology.

B. Recent Documents Circulated

Guarda also referred to recent proposals and other documents circulated in the context of the discussion on environmental goods, as highlighted below.

- ***Qatar submission*** *(*TN/TE/W/19 and TN/MA/W/24) – On January 28, 2003 **Qatar** submitted to the Committee on Trade and Environment and the Negotiating Group on Market Access a paper entitled "*Negotiations on Environmental Goods: Efficient, Lower-Carbon and Pollutant-Emitting Fuels and Technologies."* Qatar proposes that certain fuels derived from natural gas and technologies based on natural gas should be included in the OECD list of environmental goods and technologies in view of their environmental benefits. These include: (i) Gas Turbines Combined Cycle Power Generation; (ii) Chemical Gas to Liquid Fuels; and (iii) Natural Gas Fuel Cell Technologies.

- ***Trade in Environmental Goods: Note by the Secretariat*** (TN/MA/S/8, December 2, 2002) – The note reviews trade in environmental goods according to the 166-item list in Japan's proposal on the issue, and draws on statistics from the United Nations Statistics Division's database and the WTO's own Integrated Data Base (IDB).[44] Methodologically, the Secretariat noted that the Japanese list does not comprehensively itemize products to "capture the specific environmental goods indicated."

[44] Communication from Japan, "Market Access for Non-Agricultural Products", TN/MA/W/15 and TN/TE/W/17, November 20, 2002.

- ***Overview of proposals*** (TN/MA/6, 5 February 2003) – General overview provided to the Negotiating Group on Market Access. This document does not address the topic of environmental goods in particular because the Group considered that such an overview at this time would be premature.

OUTLOOK

WTO Members are stepping up their efforts to reach agreement on modalities for industrial market access by the deadline of May 31. The debate on modalities for industrial goods, fortunately, is far less contentious than the current exercise on modalities in agriculture (deadline of March 31). It appears that most Members accept starting negotiations from UR bound rates, and using a combination of formula, harmonization and request-offer approaches. Disagreements remain, however, as to the scope and extent of liberalization, and flexibility for developing countries.

Regarding environmental goods in particular, there is no agreement on how these goods should be defined, or even on the principle of applying special tariff treatment to them. The two camps are divided mainly between developed country proponents and developing country opponents, and have yet to settle their fundamental differences on treatment of environment goods. In the meantime, the Chairman of Negotiating Group on Market Access has encouraged participants to submit their illustrative list of environmental goods following the example of Japan. The proposal from Qatar is significant in that consideration is being given to it in the Negotiating Group on Market Access. The proposal is clearly specific to "environmental goods" and considers the possibility of applying deeper or accelerated tariff reductions to these products.

As a general matter, is unrealistic to regard industrial market access negotiations (or other negotiations) as a stand-alone matter and in isolation. Progress on industrial modalities and environmental goods hinges on progress in other areas of the Doha negotiations. The failure to conclude agreements on TRIPS and Public Health and S&D treatment in December 2002 has added tension to the Round overall, especially due to growing disillusion of developing countries. Many developing countries consider as their highest priority meaningful liberalization in agriculture, which is facing a difficult if not impossible task to establish modalities at the end of March. The failure to establish modalities in agriculture will certainly undermine efforts on modalities in industrial goods in May, and modalities for both issues might not be achieved until the Cancun Ministerial in September.

Forthcoming Meetings and Deadlines

- March 26, 2003 – Meeting of the Committee on Market Access.
- March 31, 2003 – Members mandated to reach a "common understanding" on a possible outline for negotiating modalities.
- April 14-16, 2003 – Negotiating Session on Market Access.
- May 31, 2003 – Members to reach agreement on a particular set of negotiating modalities.

- September 10-14, 2003 – Cancun Ministerial to review progress in negotiations; possibly resolve outstanding issues on modalities.
- January 1, 2005 – Negotiations scheduled to conclude as part of the single undertaking agreed in Doha.

REGIONAL TRADE AGREEMENTS

US and Singapore Sign FTA; ITC Holds Hearing on Economic Effects of FTA

SUMMARY

President Bush and the Prime Minster of Singapore on May 6, 2003 signed the U.S.-Singapore FTA. Congress still needs to approve implementing legislation.

On April 24, 2003, the International Trade Commission (ITC) held a public hearing on the U.S.-Singapore FTA. The hearing aimed to assess the likely impact of the agreement on the U.S. economy as a whole and on specific sectors, and the interests of U.S. consumers.

Eleven representatives testified at the hearing. Most representatives stated that the FTA serves as a precedent for future negotiations in the Asia Pacific region and praised the groundbreaking chapters on Intellectual Property Rights (IPR), market access for services, and e-commerce.

ANALYSIS

I. U.S. and Singapore Sign FTA

Today President Bush and Prime Minister Goh of Singapore signed the U.S.-Singapore FTA in Washington, DC. President Bush characterized the FTA as a "modern agreement" and expressed his hope that Congress would quickly give final approval to the agreement.

Bush recognized Singapore's efforts in the fight against global terrorism and its support of UN Resolution 1441. Bush noted that Singapore is a nation that is "small in size, but large in influence".

II. ITC Holds Hearing on Economic Effects of FTA

On April 24, 2003, the International Trade Commission (ITC) held a public hearing on the U.S. –Singapore Free Trade Agreement (FTA). The ITC announced the hearing in the Federal Register on March 21, 2003 (68 FR 13952), as part of an investigation on the potential economy-wide and selected sectoral effects of the U.S.-Singapore FTA (No TA-2104-6) required by the Trade Act of 2002[45]. The hearing aimed to assess the likely impact of the FTA on the U.S. economy as a whole and on specific industry sectors, and the interests of U.S. consumers.

[45] On March 19, 2003, the ITC also initiated investigation No TA-2104-5 on the potential economywide and selected sectoral effects of the U.S.-Chile FTA (68 FR 13324). In the Federal Register of April 16, 2003 (68 FR 18673) they announced a public hearing for May 1, 2003, but this was cancelled.

Eleven representatives testified at the hearing. We highlight their comments below:

The Embassy of Singapore representative noted the enhanced market access for financial services and increased IPR protection as key benefits of the FTA for U.S. businesses in Singapore. When asked how the FTA benefits Singaporean exports to the U.S., the Embassy representative said that the FTA offers opportunities in the services sector.

When asked how the FTA will influence other U.S. trade negotiations in the region, the Embassy representative pointed out that this FTA adds to the competitive dynamic of the multilateral process and will help the Asia Pacific Economic Cooperation (APEC) move forward.

The U.S. Chamber of Commerce representative said the key benefits of the FTA are its comprehensiveness, the immediate elimination of all tariffs, the removal of trade and investment barriers, the increased IPR protection, and the increased access to services markets. When asked about the key benefits for U.S. companies and consumers, the Chamber representative named benefits in the areas of financial services and e-commerce. Regarding the impact of the FTA on U.S. exports, the Chamber representative mentioned opportunities for pharmaceutical companies.

Responding to a question about possible complaints, the Chamber representative said that the Chamber is not aware of wholesale industries complaining about the FTA, although some individual companies complain about the provisions on market access.

The U.S.-Singapore FTA Business Coalition thinks that this FTA contains groundbreaking commitments in the area of services, IPR protection, and e-commerce. When asked about the impact of the reservations that Singapore made on some services, the Coalition representative responded that this impact will be minimal and that those reservations will fall away later.

Responding to a question about the benefits of the FTA for the U.S. consumers, the Coalition representative pointed out that consumers will have a larger choice in goods and services, as well as better quality and prices. When asked what new sectors the FTA will open up for U.S. exports, the Coalition representative named the financial sector and the express delivery sector.

Citigroup said that the FTA contains a very good chapter on services, which is a precedent for other negotiations in the region. When asked about the benefits for U.S. companies and consumers, the Citigroup representative responded that workers in the financial service industry will benefit from the fact that the FTA will strengthen the financial service industry worldwide.

The Air Courier Conference of America International (ACCA) considers the FTA a benchmark agreement for the express delivery services (EDS), applauding the inclusion of trade-facilitation provisions and of an appropriate definition of EDS. However, ACCA prefers a reduction of the six-hour target for release of express shipments in the FTA, and also believes that cross-subsidization provisions in future agreements should be more rigorous than those in the U.S.-Singapore FTA.

When asked about the impact of the reservations that Singapore made on some services, the ACCA representative pointed out that Singapore excluded international EDS from the postal reservation.

Responding to another question, the ACCA representative said that the FTA benefits U.S. and ASEAN consumers because it facilitates exports and imports in and out of the region.

Walmart Stores thinks the FTA sets important precedents for sourcing and investment. Other key benefits are customs cooperation, increased market access for goods, fair treatment for service providers and regulatory transparency in financial, construction and engineering, advertising, express delivery, and distribution services, the commitments with non-tariff barriers, and the IPR protection.

Walmart Stores is disappointed, however, with the overly restrictive rules of origin for textiles and apparel products.

Responding to a question about the benefits for U.S. consumers, the Walmart Stores representative said that the FTA makes it possible to offer lower prices and the opportunity to receive Walmart Stores products overseas.

The Direct Selling Association (USDSA) representative said that the key benefits of the FTA are that it provides full market access to the direct selling industry and a more permanent and stable business environment for U.S. companies. Also, other governments in the region will consider Singapore's treatment of direct selling when formulating their own policies.

When asked what will be the benefit of the FTA for USDSA consumers, the USDSA representative said that Americans or Singaporeans in the U.S. with relatives in Singapore directly benefit from the ability to introduce people in Singapore to the opportunities that USDSA companies represent.

The International Intellectual Property Alliance (IIPA) thinks the provisions for copyright and other IP protection and enforcement in the FTA are very important.

Responding to a question about the significance of piracy in Singapore, the IIPA representative responded that piracy is mainly a problem with computer software, and not as much with motion pictures and music.

When asked if the IPR provisions in the FTA stay ahead of the changes in the information technology, the IIPA representative said that this will continue to be a challenge, but that the FTA provides many valuable tools and obliges Singapore to fully implement the FTA, which will help them control piracy in the electronic age.

The Entertainment Industry Coalition for Free Trade (EIC) representative said that the provisions on IPR protection in the digital age, copyright enforcement, customs valuation, and market access for goods and services are vital. Responding to a question about the importance of the provisions on market access for services and goods and on customs valuation,

the EIC representative pointed out that those provisions are important as a precedent and because they are now in a legally binding agreement.

When asked if the IPR provisions in the FTA stay ahead of the changes in the information technology, the EIC representative responded that these provisions allow the IIPA to think about new ways to provide products through digital environments.

Responding to a question about how the revenues from the international markets will change for the EIC, the representative said that there will be growth in new revenue streams such as the multi-channel programming or the cable and satellite TV industry, and in online services and delivery.

The Pharmaceutical Research and Manufacturers of America (PRMA) representative named the provisions on IPR protection, including better provisions with respect to data exclusivity and patent term restoration, and the provisions on parallel importation as key benefits of the FTA.

When asked about changes within the FTA that affect market access for PRMA, the PRMA representative said the big change were the provisions on IPR protection. Responding to a question about the possible influence of the provisions on IPR protection in the FTA on the size and the growth of the generic industry, the PRMA representative stated that this influence will be small because by definition the generic industry does not depend on IPR protection, but on IPR expiration.

The Semiconductor Industry Association (SIA) said that the U.S. high-technology industry will benefit from the increased IPR protection, the increased market access for telecommunication services, the e-commerce provisions, and the customs provisions in the FTA.

When asked what the FTA changes about the Singaporean law concerning market access in services, the SIA representative responded that there was an improvement on the service side and that that Singapore telecommunications will be more open to competition.

OUTLOOK

The Administration still needs to send implementing legislation for the U.S.-Singapore FTA to Congress, which Congress is expected to pass.

The original plan was to submit the implementation legislation for the U.S.-Singapore FTA together with the implementation legislation for the U.S.-Chile FTA. There are concerns however that there might be a delay in the signing of the FTA with Chile because of the Chilean lack of support for the U.S. policy toward Iraq.

The overall goal remains to pass both FTAs by the end of 2003, and to implement the provisions by the beginning of 2004.

USTR Releases Full Text of U.S.-Chile FTA; ITC Announces Public Hearing on Economy-wide and Sectoral Effects of U.S.-Chile FTA

SUMMARY

We want to alert you to the following developments:

- USTR Releases Full Text of U.S.-Chile FTA
- ITC Announces Public Hearing on Economywide and Sectoral Effects of U.S.-Chile FTA

ANALYSIS

I. USTR Release Full Text of U.S.-Chile FTA

The United States Trade Representative (USTR) has released the full text of the U.S.-Chile Free Trade Agreement (FTA), after completing a lengthy legal scrub of the English and Spanish versions of the agreement. The consolidated texts are available on the USTR website at www.ustr.gov.

It remains unclear when the United States and Chile will formally sign the agreement. Some sources speculate that Chile's lack of support for the U.S.-led war with Iraq is hindering efforts to complete the agreement.

II. ITC Announces Public Hearing on Economywide and Sectoral Effects of U.S.-Chile FTA

On April 16, 2003, the International Trade Commission (ITC) announced in the Federal Register (68 FR 18673) that it is holding a public hearing in connection with the investigation on the potential economywide and selected sectoral effects of the U.S.-Chile Free Trade Agreement (FTA). The ITC published notice of the institution of this investigation in the Federal Register on March 19, 2003 (68 FR 13324).

The hearing will be held on May 1, 2003. The ITC also requested written comments on the matters that the ITC will address in its investigation. Comments are due on May 8, 2003.

Chile and Singapore FTAs Set Important Precedents for Future FTAs

SUMMARY

On April 28, 2003, the U.S. Chamber of Commerce and the Latin America/Caribbean and Asia/Pacific Economics and Business Association co-hosted a discussion on the U.S.-Chile and U.S.-Singapore Free Trade Agreements (FTAs).

Speakers agreed that the key benefit of both agreements for the U.S. is that they spread the idea of free trade in the region and motivate other countries to pursue FTAs with the U.S. The speakers also characterized the Chile and Singapore FTAs as "groundbreaking," with several chapters that should serve as precedents for future agreements.

ANALYSIS

On April 28, 2003, the U.S. Chamber of Commerce and the Latin America/Caribbean and Asia/Pacific Economics and Business Association co-hosted a discussion on the recently concluded U.S.-Chile and U.S.-Singapore Free Trade Agreements (FTAs). The discussion focused on the influence of the FTAs on U.S. trade and investment and on other trade negotiations in Asia and Latin America. In addition, speakers noted which chapters are the most groundbreaking and should serve as precedents for future agreements.

The speakers included:

- Robert Scollay, University of Auckland, New Zealand, Coordinator of the Pacific Economic Cooperation Council (PECC) Trade Forum;
- Sebastian Saez, Head of Foreign Trade Department, Ministry of Economy, Chile;
- Jeffrey Schott, Senior Fellow, Institute for International Economics;
- Sidney Weintraub, William E. Simon Chair in Political Economy;
- Ralph Ives, Assistant United States Trade Representative (USTR), Chief U.S. negotiator for the US-Singapore FTA;
- Osvaldo Rosales, Director of International Economic Relations, Chilean Ministry of Foreign Affairs;
- Neo Gim Huay, Coordinating Negotiator, U.S.- Singapore FTA.

I. Chile and Singapore FTAs Encourage Competitive Liberalization

Speakers agreed that the key benefit of the FTAs with Chile and Singapore for the U.S. is that they provide a rationale for competitive liberalization and motivate more countries to seek an agreement with the United States.

Weintraub noted that the downside of the FTAs is that by concluding preferential agreements with some countries while excluding others, the US is fracturing the world system and creating tensions with a number of countries.

Scollay said that preferential access to foreign markets and increased incentives for trade and investment are the most important economic gains of the FTAs, but he thought that they would benefit Chile and Singapore more than the US.

Schott named the removal of Chilean MFN tariffs on U.S. goods, the increase in U.S. exports, and the increased trade in services as benefits of the FTA for U.S. trade. Schott emphasized that the most important benefit is not increased trade, but the better environment for investment.

Saez noted that the key benefit of the FTA for the US is that the FTA will allow the US to compete with the EU and Canada in the Chilean market.

II. FTAs Set Important Precedent for Future Agreements

The speakers thought that the following chapters of both FTAs are groundbreaking and serve as a precedent for future agreements:

- The IPR provisions;
- The labor and environment standards;
- The dispute settlements provisions;
- The services provisions;
- The investment provisions;
- The e-commerce chapter in the Singapore FTA;
- The government procurement provisions in the Chile FTA;

Scollay, however, did not support using these FTAs as an exact template for future agreements and stated that the US should negotiate each agreement individually.

OUTLOOK

Implementation of the FTAs is the next challenge. Saez noted that some chapters in the Chile FTA, such as the e-commerce, contain implementation language.

Some speakers expressed concerns about the restrictive rules of origin in the FTAs, especially for textiles and apparel, and certain agricultural products. The speakers cautioned that, when implemented, these rules could counteract the tariff liberalization.

Comments Focus on Negative Employment Effect of U.S.-Morocco and U.S.-Central America FTAs

SUMMARY

On March 28, 2003, the United States Trade Representative (USTR) received comments on the employment impact of the U.S.-Morocco Free Trade Agreement (FTA), as requested on February 7, 2003 (68 FR 6529). Only a few associations submitted comments and they generally agreed that the FTA would negatively affect employment in their respective industries.

On April 25, 2003, the USTR received comments on the employment impact of the U.S.-Central America FTA (CAFTA), as requested on March 19, 2003 (68 FR 13358). Comments indicate that an FTA based on NAFTA would have a negative impact on U.S. employment. Some comments note that CAFTA should not contain restrictions on duty drawback.

The USTR has requested comments on the employment impact of the U.S.-Southern African Customs Union (SACU) FTA (68 FR 24532) and the U.S.-Australia FTA (68 FR 24785).

ANALYSIS

I. U.S.-Morocco FTA Will Have a Negative Impact on U.S. Employment

On February 7, 2003, the Trade Policy Staff Committee (TPSC), an interagency body chaired by the Office of the United States Trade Representative (USTR), announced in the Federal Register (68 FR 6529) that the USTR and the Department of Labor ("Labor") requested public comments on the potential impact of the proposed U.S.-Morocco Free Trade Agreement (FTA) on U.S. employment, including labor markets.

Comments were due by March 28, 2003. The following associations submitted comments:

- The American Dehydrated Onion and Garlic Association (ADOGA);
- The California Olive Association (COA).

ADOGA and COA both contend that the proposed FTA will negatively affect employment opportunities in the U.S. dehydrated onion and garlic industry and olive industry. ADOGA and COA therefore oppose this FTA.

II. Comments Oppose Duty Drawback Restrictions in CAFTA; Insist NAFTA Should Not Serve as Model for CAFTA

On March 19, 2003, the TPSC announced in the Federal Register (68 FR 13358) that the USTR and the Department of Labor requested public comments on the potential impact of the proposed U.S.-Central America FTA (CAFTA) on U.S. employment, including labor markets.

Comments were due by April 25, 2003. We highlight the comments of the following associations:

- The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO);
- Comstock & Theakston, Inc.;
- The American Association of Exporters and Importers (AAEI);
- The National Customs Brokers & Forwarders Association of America (NCBFAA).

AFL-CIO insists that if CAFTA is based on the NAFTA model without significant improvements it will have a negative impact on U.S. employment. Such an FTA will increase imports and the supply of low-skilled labor from Central America, which will lead to job losses in key U.S. industries and erode wages and working conditions for U.S. public sector workers.

Comstock & Theakston, AAEI, and NCBFAA filed comments regarding the employment impact of restrictions on duty drawback. They agree that duty drawback restrictions would disadvantage U.S. companies in terms of export trade, which will result in a loss of U.S. jobs, particularly in those companies related to export trade. Therefore, they urge the U.S. Administration to ignore the subject of restrictions completely and to allow each country in the U.S.-CAFTA to maintain its existing duty drawback program to the fullest extent.

The following associations also submitted comments:

- The American Dehydrated Onion and Garlic Association;
- The American Sugar Alliance;
- David Harris, MD.

OUTLOOK

A third negotiating round with Morocco will take place in June 2003, in the United States. Sources indicate that the negotiations are moving fast and that it will be possible to reach an agreement by the end of the year, which is the goal that the Administration set at the beginning of the negotiations.

A fourth round of negotiations with Central America took place during the week of May 12, 2003, in Guatemala. The goal is to reach an agreement by the end of the year.

Labor groups opposed the provisions in the Singapore and Chile FTAs, but will be more critical of the Central America FTA, given International Labor Organization and U.S. State Department reports citing labor law violations. Among other things, labor groups are concerned that U.S. workers would be disadvantaged by other countries lowering their labor costs by violating labor laws.

Comments on the employment impact of the South Africa and Australia FTAs are due to USTR by June 6.