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Japan External Trade Organization

WTO AND REGIONAL TRADE AGREEMENTS

August 2003

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

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Thomas and Hatch Unveil International Tax Bills; Hatch Introduces ETI Repeal Bill

On July 25, 2003, House Ways and Means Committee Chairman Bill Thomas (R-California) and Senator Orrin Hatch (R-Utah) unveiled separate but somewhat similar bills that would replace the Extraterritorial Income Exclusion (ETI) Act with a number of tax incentives and international tax reforms.

On July 30, 2003, Hatch introduced his legislation to repeal the ETI Act. The Senate Finance Committee is unlikely to mark up the bill.

Customs and Border Security

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On July 23, 2003, the Bureau of Customs and Border Protection (CBP) published in the Federal Register (68 FR 43573) proposed rules requiring advance electronic manifest information for all types of domestic cargo, both inbound and outbound.

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Customs Publishes Interim Rule on Disclosure Procedures for Commercial Information from Business Submitters; Customs Revises Tonnage Duties

We would like to warn you to the following customs developments:

- On August 11, 2003, the Bureau of Customs and Border Protection (CBP) announced an interim rule regarding the disclosure procedures that CBP follows when receiving commercial information from a business submitter.

- On August 13, 2003, CBP announced that they revised the amounts of tonnage duties applicable to vessels entering the United States from a foreign port.

China Joins CSI; GAO Releases Report on CSI and C-TPAT

On July 28, 2003, the General Accounting Office (GAO) released a report on the Container Security Initiative (CSI) program and the Customs-Trade Partnership Against Terrorism (C-TPAT) program. The report recommends the Department of Homeland Security (DHS) develop human capital planning, performance measures and strategic plans to ensure the long-term success and accountability of the two programs.

We summarize the report below. The full report is available at www.gao.gov.

In related events, the U.S. and China on July 29, 2003 signed a "declaration of principle" for China to join the CSI program. The declaration does not specify the date on which China will start the implementation.

Free Trade Agreements

Committees of Jurisdiction Approve Implementing Legislation for Singapore and Chile FTAs

On July 17, 2003, the House Ways and Means Committee, the Senate Finance Committee, and the Senate Judiciary Committee formally approved the final text of the implementing legislation of the U.S.-Singapore Free Trade Agreement (HR 2739, S 1417) and U.S.-Chile Free Trade Agreement (HR 2738, S 1416). The House Judiciary Committee approved the implementing bills on July 16, 2003.

The formal Committee approval sets the stage for full House and Senate consideration of the bills.

House Approves Singapore and Chile FTAs Setting Stage for Full Senate Consideration

On July 24, 2003, the U.S. House of Representatives approved the U.S.-Singapore Free Trade Agreement (HR 2739) by a vote of 272-155. The House approved The U.S.-Chile Free Trade Agreement (HR 2738) by a vote of 270-156. The House debated the agreements for two hours each, with the time controlled by the leaders of the House Ways and Means Committee and the House Judiciary Committee, which has jurisdiction over the immigration provisions in the two agreements.

The House passage of the two FTAs set the stage for full Senate consideration.

Senate Approves Singapore and Chile FTAs

On July 31, 2003, the U.S. Senate approved the U.S.-Singapore Free Trade Agreement (S 1417) by a vote of 66-32. The Senate approved the U.S.-Chile Free Trade Agreement (S 1416) by a vote of 66-31. The Senate debated the agreements for seven hours.

The approval by the Senate secured the Congressional passage of the first two Free Trade Agreements (FTAs) under Trade Promotion Authority (TPA). President Bush is now expected to sign both agreements, after which the formal implementation starts on January 1, 2004.

Some senators protested over immigration provisions and urged the Administration not to include such provisions in future agreements.

U.S. and Saudi Arabia Sign TIFA; USTR Notifies Congress of Intent to Initiate FTA Negotiations with Bahrain and the Dominican Republic

We want to alert you to the following developments:

- On July 31, 2003, The U.S. and Saudi Arabia sign a Trade and Investment Framework Agreement (TIFA).

- On August 4, 2003, the United States Trade Representative (USTR) notified Congress of its intention to initiate negotiations on a Free Trade Agreement (FTA) with Bahrain and the Dominican Republic.

Baucus Urges Administration to Refocus Trade Efforts on Asia; U.S. and Thailand Likely to Decide on FTA Negotiations "in the Next Few Weeks"

At a July 24, 2003 event of the New America Foundation (NAF), Senator Max Baucus (D-Montana) criticized the U.S. Administration for being "virtually absent" in Asia, and urged them to adopt a more active trade agenda toward the region. Among other steps, Baucus suggested the U.S. should initiate World Trade Organization (WTO) dispute settlement procedures against China, as well as increase trade relations with Japan.

In related events, a representative from the Department of Commerce indicated at a Women in International Trade (WIIT) discussion on the Enterprise for ASEAN Initiative (EAI), that the U.S. and Thailand are likely to decide "in the next few weeks" on whether or not to negotiate an FTA.

USTR Requests ITC Studies of Economic Impact FTAA and U.S.-Dominican Republic FTA

USTR recently requested ITC studies of the economic impact of the Free Trade Area of the Americas (FTAA) and of a U.S.-Dominican Republic Free Trade Agreement (FTA).

ITC Report Concludes that NAFTA and Other FTAs Contributed to U.S. Growth

The International Trade Commission (ITC) released a report in August 2003 entitled "The Impact of Trade Agreements on the U.S. Economy". The report concludes that trade agreements were only one of many factors that contributed to U.S. growth in the past twenty years. The five trade agreements analyzed in the report, including NAFTA, have had a positive impact on the U.S. economy.

The report serves as a useful tool for Members of Congress to evaluate U.S. trade policy, especially given the TPA requirements for congressional consultations. The report provides further evidence that multilateral trade negotiations benefit the U.S. economy more than bilateral and regional negotiations.

The full report is available at www.usitc.gov.

Multilateral

WTO Panel Upholds U.S. Sunset Review in Japan Steel Dispute

A WTO Panel on August 14, 2003 in the decision on *United States - Sunset Review of Anti-dumping Duties on Corrosion-resistant Carbon Steel Flat Products from Japan* has dismissed a challenge by Japan to U.S. "sunset review" law and practice. Under the WTO *Anti-dumping*

Agreement, definitive anti-dumping duties must terminate after five years, unless the importing country determines in a 'sunset review' that expiration of the duty "would be likely to lead to continuation or recurrence" of the dumping and injury. The Panel rejected Japan's arguments that many of the disciplines applicable to the initiation of anti-dumping investigations also apply at the sunset review stage.

Ministers Make Little Progress at Montreal Ministerial; Begin Final Preparations for Cancun Ministerial

Twenty-five trade Ministers meeting in a “mini-Ministerial” at Montreal from 28-30 July made little progress on the Doha agenda. Now, all now depends on the intensive process of consultation and negotiation which will start in Geneva on 11 August and on the ability of the EU and the US to reach a bilateral understanding on the agriculture dossier which can be the basis for general agreement.

WTO Members have less than 20 working days in which to prepare draft agreements for submission to Ministers at the Cancun Conference on 10–14 September. At this stage no agreement has been reached on any of the nine substantive issues on which decisions will be needed.

REPORTS IN DETAIL

UNITED STATES

Senate Approves Energy Legislation; NHTSA Extends Performance Requirements for Heavy Vehicles Equipped with ABS

SUMMARY

On July 31, 2003, the U.S. Senate passed the House Energy Policy Act of 2003 (HR 6) by a vote of 84-14, after adopting a substitute amendment (SA 1537) that duplicates the text of the Senate energy legislation of 2002. The Senate adopted the energy bill of 2002 in order to complete the energy legislation before the Congressional recess, after Democrats and Republicans could not agree on the Senate Energy Policy Act of 2003 (S14).

On August 11, 2203, the National Highway Traffic Safety Administration (NHTSA) announced an extension of the requirement of braking-in-a-curve performance tests for single-unit trucks and buses that are required to be equipped with antilock brake systems (ABS).

ANALYSIS

I. Senate Approves Energy Legislation

On July 31, 2003, the U.S. Senate passed the House Energy Policy Act of 2003 (HR 6) by a vote of 84-14, after adopting a substitute amendment (SA 1537) that duplicates the text of the Senate energy legislation of 2002. The Senate adopted the energy bill of 2002 in order to complete the energy legislation before the Congressional recess, after Democrats and Republicans could not agree on the Senate Energy Policy Act of 2003 (S14).

The Senate version of HR 6 would direct the National Highway Traffic Safety Administration (NHTSA) to increase the corporate average fuel economy (CAFE) standards for light trucks, including sport utility vehicles (SUVs), within 15 months, and for cars within two years. The bill does not specify the future CAFE standards.

The bill will now go to a conference committee where House and Senate negotiators will try to construct a final version. Senate Energy and Natural Resource Committee Chairman Pete Domenici (R-New Mexico) and House Energy and Commerce Committee Chairman Billy Tauzin (R-Louisiana) will co-chair the conference. Sources indicate that informal negotiations between the House Energy and Commerce Committee and the Senate Energy and Natural resources Committee will start by the end of August.

II. NHTSA Extends Performance Requirements for Heavy Vehicles Equipped with ABS

On August 11, 2203, the National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT), published a notice in the Federal Register (68 FR 47485),

announcing an extension of the requirement of braking-in-a-curve performance tests for single-unit trucks and buses that are required to be equipped with antilock brake systems (ABS).

The NHTSA proposed the braking-in-a-curve requirements in December 1999, as amendments to the final rule on hydraulic and air brake standards which requires medium and heavy vehicles to be equipped with ABS to improve the directional stability and control of these vehicles while braking. The NHTSA proposed the braking-in-a-curve requirements to complement both the ABS equipment requirements and stopping distance requirements in the final rule.

OUTLOOK

By passing the energy bill of 2002, the Senate risks a similar outcome as last year, when the House and the Senate could not reach a final agreement due to differences over environmental protection and production incentives.

The extension of the requirement of braking-in-a-curve performance tests for single-unit trucks and buses that are required to be equipped with antilock brake systems (ABS) is effective October 10, 2003. Petitions for reconsideration of the rule must be received by September 25, 2003.

House Bill Would Tighten Buy America Provisions for Defense Department Procurements; Senate and Administration Opposition to Bill

SUMMARY

The House and Senate have yet to reconcile their differences on imposing more restrictive conditions in the Buy America Act regarding defense procurement. Previously, on May 22, 2003, the United States House of Representative approved the National Defense Authorization Act for Fiscal Year 2004 (HR 1588), which, if signed into law, would make more restrictive the application of Buy America provisions to Defense Department procurement activities. The Bush Administration and Senate are opposed to these provisions, and have not convened to reconcile the differences between the House bill and the Senate version (S 1050).

ANALYSIS

I. House Bill Would Tighten Buy America Provisions

On May 22, 2003, the United States House of Representative approved the National Defense Authorization Act for Fiscal Year 2004 (HR 1588), which, if signed into law, would make two primary changes to the application of Buy America provisions to Defense Department procurement activities:

- One provision would require that Defense Department procurements subject to the Buy America requirements contain at least 65 percent U.S.-origin content, instead of the current 50-percent requirement.

- Another provision would make it more difficult for the Defense Department to waive Buy America requirements in its procurement activities by prohibiting the Defense Department from referencing U.S. bilateral trade agreements in determining if a contract is consistent with "the public interest." A House source explains that while the provision would not close every loophole with regard to Defense Department interpretation of bilateral trade agreements, it would instruct the Defense Department that it is *not* "in the public interest" to reference such trade agreements when determining the application of Buy America provisions to the awarding of contracts.

II. House Rejects Amendment to Eliminate MTOPS Standard for Computer Exports

In related developments, the House rejected an amendment to HR 1588 that would have eliminated the Millions of Theoretical Operations Per Second (MTOPS) standard for export controls on computers. Critics of the MTOPS standard believe that it is no longer an effective measure of computing power and that it forces the Administration to control items that need not be controlled. President Bush supports a change in the MTOPS system, and the amendment would have allowed the Administration to develop a new system for regulating computer exports. Representative David Dreier (R-California) sponsored the amendment.

III. Senate Bill is Less Restrictive; Conference Committee Set to Convene

The Senate also approved a National Defense Authorization Act for Fiscal Year 2004 (S 1050) on May 22, 2003. While similar to HR 1588, S 1050 is far less restrictive regarding the Buy America provisions.

The two bills (HR 1588 and S 1050) will be reconciled in a House-Senate conference. The House Armed Services Committee Chairman Duncan Hunter (R-California) will chair the conference. Although Hunter supports the Buy America provisions, a House source speculates that they will likely be removed from the bill during the conference because the Senate, in general, and the House Ways and Means Committee are likely to raise opposition to the provisions. Moreover, in a July 8 letter, Defense Secretary Donald Rumsfeld said he would recommend that President Bush veto the bill unless the Buy America provisions are less restrictive.

OUTLOOK

The House-Senate conference has not been formally scheduled, but sources in both the House and Senate state that the conference should convene soon, perhaps after the August recess. Meanwhile, lobbyists on both sides – representing defense companies with global suppliers and smaller U.S. defense manufacturers, will seek to make their case to lawmakers.

Another dynamic that could influence the prospects for the bill is the end of major combat in Iraq. The House bill drew support based on heightened tensions against traditional allies such as France and Germany, which appear to be waning.

Thomas and Hatch Unveil International Tax Bills; Hatch Introduces ETI Repeal Bill

SUMMARY

On July 25, 2003, House Ways and Means Committee Chairman Bill Thomas (R-California) and Senator Orrin Hatch (R-Utah) unveiled separate but somewhat similar bills that would replace the Extraterritorial Income Exclusion (ETI) Act with a number of tax incentives and international tax reforms.

On July 30, 2003, Hatch introduced his legislation to repeal the ETI Act. The Senate Finance Committee is unlikely to mark up the bill.

ANALYSIS

I. Thomas and Hatch Unveil International Tax Bills

On July 25, 2003, House Ways and Means Committee Chairman Bill Thomas (R-California) and Senator Orrin Hatch (R-Utah) unveiled separate but somewhat similar bills that would replace the Extraterritorial Income Exclusion (ETI) Act with a number of tax incentives and international tax reforms. Under the Thomas bill, entitled the American Jobs Creation Act of 2003 (H.R. 2896), ETI benefits would be phased out from 100 percent this year, to 65 percent in 2003, and 35 percent in 2005, before zeroing out in 2006.

Very briefly summarized, the Thomas bill would:

- Reduce the top corporate tax rate to 32 percent for companies with less than $10 million in taxable income;
- Provide several depreciation reforms, including a one-year extension of the 50 percent bonus depreciation;
- Extend for two years the section 179 expensing increases;
- Provide several corporate alternative minimum tax reforms;
- Revise the rules governing earnings stripping;
- Extend for two years and expand the R&D tax credit;
- Lengthen the carryback for net operating losses;
- Provide a six-month rate reduction for foreign earnings repatriated to the U.S.;
- Make a number of changes to benefit S corporations;

- Repeal base company sales and service rules and extend for one year the active finance provision;
- Reduce from nine to two the number of foreign tax credit baskets;
- Extend the foreign tax credit carryover from 5 years to 10 years;
- Reform interest allocation rules;
- Impose a regular tax on prospective corporate inversions;
- Reform the tax treatment of individual expatriates; and
- Enact a number of anti-tax shelter provisions and Enron-related loophole closers.

Unlike the legislation Thomas introduced last year, the America Jobs Creation Act of 2003 does not include a provision to codify the economic substance doctrine, which is used by courts to determine if a tax transaction serves a business purpose or is merely designed to avoid taxes.

II. Hatch Introduces ETI Repeal Bill

On July 30, 2003, Senator Orrin Hatch (R-Utah), a senior member of the Senate Finance Committee, introduced legislation to repeal the Extraterritorial Income Exclusion (ETI) Act. His bill, "The Promote Jobs and Growth in the USA Act of 2003" (S 1475) would phase out ETI over three years and make a number of reforms that benefit companies with foreign operations. The bill would also expand and make permanent the R&D tax credit, and extend and expand favorable business property depreciation rules.

OUTLOOK

With the House scheduled to start its August recess on July 30, 2003, the Thomas bill will not see action until September at the earliest.

The Senate Finance Committee is unlikely to mark up Senator Hatch's bill. Rather, the bill is intended more as a means to influence the debate on the issue. Senate Finance Committee Chairman Charles Grassley (R-Iowa) and Ranking Member Max Baucus (D-Montana) are drafting their own legislation, which the Finance Committee could act on later this year. They are expected to release their bill sometime after the August recess.

Customs and Border Security

Customs Proposes Advance Manifest Rules for All Cargo; Withdraws Proposal Regarding Confidential Treatment of Certain Vessel Manifest Information

SUMMARY

On July 23, 2003, the Bureau of Customs and Border Protection (CBP) published in the Federal Register (68 FR 43573) proposed rules requiring advance electronic manifest information for all types of domestic cargo, both inbound and outbound.

On August 13, 2003, CBP announced the withdrawal of a notice of proposed rulemaking (NPRM) regarding the confidential treatment of certain vessel manifest information. The effective date of withdrawal is August 13, 2003.

ANALYSIS

I. Customs Proposes Advance Manifest Rules for All Cargo

On July 23, 2003, the Bureau of Customs and Border Protection (CBP), Department of Homeland Security (DHS), published in the Federal Register (68 FR 43573) proposed rules requiring advance electronic manifest information for all types of domestic cargo, both inbound and outbound.

We highlight below the timeframes for submission of electronic manifest information by mode:

Air Cargo

- **Inbound:** 4 hours prior to arrival in the United States. For U.S.-bound cargo departing any foreign port or place in North America (including Mexico), Central America, South America (from north of the Equator only), the Caribbean, and Bermuda, manifest information must be received no later than the time of the departure of the aircraft for the United States (*i.e.*, no later than the time that wheels are up on the aircraft, and it is en route directly to the United States).

- **Outbound:** 2 hours prior to scheduled departure.

Vessel Cargo

- **Inbound:** 24 hours prior to lading at foreign port of departure.

- **Outbound:** 24 hours prior to departure.

Rail Cargo

- **Inbound:** 2 hours prior to arrival at first U.S. port.
- **Outbound:** 4 hours prior to attachment of engine to train.

Truck Cargo

- **Inbound:** 30 minutes or 1 hour prior to arrival at first U.S. port.
- **Outbound:** 1 hour prior to scheduled border crossing.

The proposed rules detail the type of manifest information required for each type of cargo as well as details of transition and implementation.

The notice of proposed rulemaking contains a detailed section in which Customs responds to the many comments it has received during the development of the proposed rules. The comments covered a variety of general and specific issues, including:

- Costs of automation;
- Protection of Confidential Information; and
- Interfacing with Other Government Agencies, particularly the Food and Drug Administration with respect to the Public Health Security and Bioterrorism Preparedness Act of 2002 ("Bioterrorism Act"), which also requires advance manifest information for food imports.

In addition to written comments, Customs worked with the trade community and other interested parties through a series of public meetings as well as through the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC).

II. Customs Withdraws Proposal Regarding Confidential Treatment of Certain Vessel Manifest Information

On August 13, 2003, CBP published a notice in the Federal Register (68 FR 48327), announcing the withdrawal of a notice of proposed rulemaking (NPRM) regarding the confidential treatment of certain vessel manifest information.

The NPRM, which was published on January 9, 2003, proposed to provide that in addition to the importer or consignee, parties that electronically transmit vessel cargo manifest information directly to CBP 24 or more hours before cargo is laden aboard the vessel at the foreign port may request confidentiality with respect to importer or consignee identification information. Current regulations allow only the importer or consignee, or an authorized employee, attorney, or official of the importer or consignee, to make such requests *(Please see W&C January 2003 report).*

CBP decided to withdraw the proposal because of a lack of consensus within the trade community regarding the value of the proposed amendment, and the administrative burden the proposal, if adopted, would create for CBP and U.S. importers.

OUTLOOK

Public comments regarding the proposed advance manifest rules are due on August 22, 2003. Customs must promulgate final regulations by October 1, 2003, in accordance with the Trade Act of 2002.

The effective date of withdrawal of the proposal regarding confidential treatment of certain vessel manifest information is August 13, 2003.

Customs Publishes Interim Rule on Disclosure Procedures for Commercial Information from Business Submitters; Customs Revises Tonnage Duties

SUMMARY

We would like to warn you to the following customs developments:

- On August 11, 2003, the Bureau of Customs and Border Protection (CBP) announced an interim rule regarding the disclosure procedures that CBP follows when receiving commercial information from a business submitter.

- On August 13, 2003, CBP announced that they revised the amounts of tonnage duties applicable to vessels entering the United States from a foreign port.

ANALYSIS

I. Customs Publishes Interim Rule on Disclosure Procedures for Commercial Information from Business Submitters

On August 11, 2003, the Bureau of Customs and Border Protection (CBP), Department of Homeland Security (DHS), published a notice in the Federal Register (68 FR 47453), announcing an interim rule regarding the disclosure procedures that CBP follows when receiving commercial information from a business submitter. The rule sets forth an established treatment of commercial information and seeks to assure the trade community that such submissions will continue to be treated the same by CBP under the DHS as the information was treated when Customs was under the Department of the Treasury.

II. Customs Revises Tonnage Duties

On August 13, 2003, the Bureau of CBP announced in the Federal Register (68 FR 48279) that they revised the amounts of tonnage duties applicable to vessels entering the United States from a foreign port. The changes reflect the rates that were in effect before the President signed the Budget Reconciliation Act of 1990, which increased the duties. Congress did not extend these provisions in the Budget Reconciliation Act of 1990 beyond the fiscal year 2002 expiration date.

According to the Budget Reconciliation Act of 1990, for vessels calling on the United States from North American ports and certain Central American, South American and Caribbean ports, the amount of tonnage tax was increased to 9 cents per ton, not to exceed in the aggregate 45 cents per ton per annum. For vessels entering a port of the United States from any other foreign port or place, the amount of tonnage tax was increased to 27 cents per ton, not to exceed $1.35 per ton per annum.

The FR notice establishes that the tonnage tax rates have reverted to the previous rates of 2 cents per ton (10 cents annual aggregate cap) for vessels arriving in the United States from the first

group of ports and 6 cents per ton (30 cents annual aggregate cap) for vessels arriving from all other originating ports.

OUTLOOK

The interim rule on the disclosure procedures for commercial information from business submitters is effective from August 11, 2003. CBP also invites comments, which are due by October 10, 2003.

The rule revising the amounts of tonnage duties applicable to vessels entering the United States from a foreign port is effective as of August 13, 2003.

China Joins CSI; GAO Releases Report on CSI and C-TPAT

SUMMARY

On July 28, 2003, the General Accounting Office (GAO) released a report on the Container Security Initiative (CSI) program and the Customs-Trade Partnership Against Terrorism (C-TPAT) program. The report recommends the Department of Homeland Security (DHS) develop human capital planning, performance measures and strategic plans to ensure the long-term success and accountability of the two programs.

We summarize the report below. The full report is available at www.gao.gov.

In related events, the U.S. and China on July 29, 2003 signed a "declaration of principle" for China to join the CSI program. The declaration does not specify the date on which China will start the implementation.

ANALYSIS

I. GAO Releases Report on CSI and C-TPAT Programs

In November 2001, the U.S. Customs Service ("Customs") initiated the Customs-Trade Partnership Against Terrorism (C-TPAT) to improve the security of containers in the private sector as they move through the global supply chain. In January 2002, Customs announced the Container Security Initiative (CSI), which allows U.S. Customs officials to screen containers at CSI-designated overseas ports.

On July 28, 2003, the General Accounting Office (GAO) released a report on the CSI program and the C-TPAT program, entitled "Container Security: Expansion of Key Customs Programs Will Require Greater Attention to Critical Success Factors" (GAO-03-770).

In the report, the GAO:

- Describes the purpose and elements of these new programs;
- Examines Customs' implementation of CSI and C-TPAT during the first year;
- Assesses the extent to which Customs has focused on factors critical to the long-term success and accountability of the programs.

Report Recommends Development of Human Capital Plans, Performance Measures, and Strategic Plans

The GAO report concludes that Customs' management of the CSI and the C-TPAT programs has not evolved from the short-term focus to the long-term strategic approach that is necessary to ensure the long-term success and accountability of the programs.

The report recommends the Secretary of the Department of Homeland Security (DHS), working with the Commissioner of Customs and Border Protection (CBP) and the CSI and C-TPAT program directors, improve the management and oversight of CSI and C-TPAT by taking the following steps:

- Develop systematic human capital plans that describe how to recruit, train, and retain staff for the CSI and the C-TPAT programs;
- Expand existing performance measures that include outcome-oriented indicators to demonstrate the achievements of the CSI and the C-TPAT programs and to establish accountability;
- Develop strategic plans that lay out the long-term objectives and detailed implementation strategies of the CSI and the C-TPAT programs.

II. China Joins the CSI Program

On July 29, 2003, the U.S. and China signed a "declaration of principle" for China to join the CSI program. China agreed to allow small teams of U.S. Customs agents to prescreen containers bound for the U.S. in the ports of Shenzhen and Shanghai.

As a result of the agreement, 19 of the world's top 20 ports in terms of exports to the U.S. have agreed to implement the CSI. U.S. Customs inspectors are currently working under CSI in 15 ports, including the ports of Rotterdam, Le Havre, Bremerhaven, Hamburg, Antwerp, Singapore, Yokohama, Hong Kong, Goteborg, Felixstowe, Genoa, La Spezia, Vancouver, Montreal, and Halifax.

CONCLUSION

The GAO report indicates that Customs agrees with the recommendations regarding human capital planning, performance measures and strategic plans. The report notes that Customs indicated it has already taken some steps and will continue to take steps to address these recommendations.

The "declaration of principle" that the U.S. and China signed does not specify the date on which China will start the implementation of the CSI program.

FREE TRADE AGREEMENTS

Committees of Jurisdiction Approve Implementing Legislation for Singapore and Chile FTAs

SUMMARY

On July 17, 2003, the House Ways and Means Committee, the Senate Finance Committee, and the Senate Judiciary Committee formally approved the final text of the implementing legislation of the U.S.-Singapore Free Trade Agreement (HR 2739, S 1417) and U.S.-Chile Free Trade Agreement (HR 2738, S 1416). The House Judiciary Committee approved the implementing bills on July 16, 2003.

The formal Committee approval sets the stage for full House and Senate consideration of the bills.

ANALYSIS

I. House Judiciary and Ways and Means Committees Approve Implementing Bills; Democrats Oppose Use of Singapore and Chile FTAs as Models

On July 16, 2003, the House Judiciary Committee approved by voice vote the final text of the implementing legislation of the U.S.-Singapore Free Trade Agreement (HR 2739) and the U.S.-Chile Free Trade Agreement (HR 2738). The House Judiciary Committee vote was the first official step toward Congressional consideration of the FTAs.

On July 17, 2003, the House Ways and Means Committee held a mock markup of the final text of the implementing legislation of both FTAs. The House Ways and Means Committee approved the Singapore FTA by a vote of 32-5, and the Chile FTA by a vote of 33-5. Representatives Fortney Stark (D-California), Gerald D. Kleczka (D-Wisconsin), Michael R. McNulty (D-New York), Stephanie Tubbs Jones (D-Ohio), and John Lewis (D-Georgia) voted against both FTAs. The remaining Committee Members were not present.

We highlight below statements made at the mock markup:

House Ways and Means Committee Chairman William Thomas (R- California) praised the Singapore and Chile FTAs as "world-class agreements" that "break open" trade in areas that were not addressed in earlier agreements. Thomas supported using both FTAs as a model for future agreements, but said that agreement should be based on the "conditions in the countries involved."

House Ways and Means Committee Ranking Member Charles B. Rangel (D-New York) appreciated the close cooperation of the Office of the United States Trade Representative (USTR) with Congress. Rangel has "great reservations" about using the labor provisions of either FTA as models for the U.S.-Central America FTA (CAFTA). Rangel emphasized that his support for the Chile and Singapore FTAs did not indicate that he would support future trade accords.

Trade Subcommittee Ranking Member Sander M. Levin (D-Michigan) said that using the Singapore and the Chile FTAs as a model for CAFTA would be "most inappropriate," pointing out that the Central American countries do not have the same labor laws and enforcement as Singapore and Chile. Levin said that he would not approve future agreements if they do not get "a negotiation of their own."

Levin also stated that the Integrated Sourcing Initiative (ISI) in the Singapore agreement, and the capital controls provisions and temporary entry provisions in both agreements should not be included in any future FTA. Levin stated that any attempt to include these provisions in agreements with countries where different conditions exist is unacceptable and will meet resistance from both parties.

Trade Subcommittee Chairman Philip M. Crane (R-Illinois) strongly supported both FTAs. Crane particularly praised the tariff elimination, the transparency in the services provisions, the investment provisions, and the intellectual property rights (IPR) protection provisions.

II. Senate Finance and Judiciary Committees Approve FTAs; Senators Feinstein, Sessions, Graham, and Chambliss Oppose Visa Provisions

On July 17, 2003, the Senate Finance Committee and the Senate Judiciary Committee also voted on the U.S.-Singapore FTA (S 1417) and the U.S.-Chile FTA (S1416). The Senate Finance Committee unanimously approved the implementing bills of both FTAs in a recorded vote with all 21 members voting.

The Senate Judiciary Committee approved the FTAs by a vote of 11-4. Senators Dianne Feinstein (D- California) and Jeff Sessions (R-Alabama) voted against the bills. In a July 16, 2003, letter to President Bush, both Senators demanded the withdrawal of the implementing legislation because of the visa provisions.

Senator Lindsey Graham (R-South Carolina) also signed the letter, but voted in favor of the FTAs due to a prior commitment he made to support the agreements. Senator Saxby Chambliss (R-Georgia) expressed similar concerns about the immigration provisions, but also voted in favor of the FTAs. Chambliss and Graham indicated, however, that they would oppose the bills in the full Senate floor.

OUTLOOK

The formal approval by the Committees of jurisdiction clears the way for a floor vote on the FTAs in the full House and the full Senate.

House Approves Singapore and Chile FTAs Setting Stage for Full Senate Consideration

SUMMARY

On July 24, 2003, the U.S. House of Representatives approved the U.S.-Singapore Free Trade Agreement (HR 2739) by a vote of 272-155. The House approved The U.S.-Chile Free Trade Agreement (HR 2738) by a vote of 270-156. The House debated the agreements for two hours each, with the time controlled by the leaders of the House Ways and Means Committee and the House Judiciary Committee, which has jurisdiction over the immigration provisions in the two agreements.

The House passage of the two FTAs set the stage for full Senate consideration.

ANALYSIS

On July 24, 2003, the U.S. House of Representatives began formal consideration of the implementing language of the U.S.-Singapore Free Trade Agreement (FTA) and the U.S.-Chile FTA, after approving closed rules of debate yesterday. Pursuant to the rules of debate, the House had two hours to debate each agreement, without amendment. The time was divided among the Democratic and Republican leaders of the House Ways and Means Committee and the House Judiciary Committee, which has jurisdiction over the immigration provisions in the two agreements.

House Approves Singapore and Chile FTAs

The House approved the U.S.-Singapore Free Trade Agreement (HR 2739) by a vote of 272-155. The House approved the U.S.-Chile Free Trade Agreement (HR 2738) by a vote of 270-156.

We highlight below the debate on the two FTAs.

Thomas Defends FTAs

Ways and Means Committee Chairman Bill Thomas (R-California), who enthusiastically supports the FTAs with both Chile and Singapore, called the Chile FTA the "first fruit" of Trade Promotion Authority. He commended the Administration for getting back into the trade arena and defended the agreement against the Democratic criticisms.

Support for Chile and Singapore FTAs Does Not Denote Support for Future Agreements

Ways and Means Committee Ranking Member Charles Rangel (D-New York) stated that he strongly supports the FTAs with both Chile and Singapore, but the labor and environmental provisions should not serve as templates for future agreements. Rangel stated, "The mere fact that we accept this language (*i.e.*, that counties enforce their own laws) does not mean that we will accept this language with other countries that don't lave laws like Chile and Singapore."

Stark Calls Labor and Environmental Provisions "Hollow Obligations"

Representative Pete Stark (D-California) expressed his strong opposition to both the Singapore and Chile FTAs. Stark also spoke on behalf of the AFL-CIO, the International Brotherhood of Teamsters, the International Brotherhood of Boilermakers, United Autoworkers, United Steelworkers, the Machinists Union, among others. Stark stated that their opposition will become "clear very soon" due to the "weak" labor provisions as well as the visa provisions contained in the two agreements.

Stark characterized the labor and environmental provisions as "hollow obligations." Therefore, Stark went on to say, the fact that the two agreements will likely serve as templates for future agreements is "reason enough to oppose them."

Stark, who is known for making inflammatory remarks, concluded by saying, "You can't trust the Bush Administration or the USTR to the do the right thing. They are like China." He then demanded that the Administration "go back to the drawing board" and develop "some real enforceable labor standards."

Levin: FTAs Should Not Serve as Template for CAFTA

Trade Subcommittee Ranking Member Sander Levin (D-Michigan) continues to oppose the labor provisions and the Integrated Sourcing Initiative (ISI) in the Singapore FTA, particularly their use as templates. Levin noted that Central America does not generally apply core labor standards and thus the two agreements should not be a template for the U.S.-Central America FTA (CAFTA).

Judiciary Committee Will Oppose Future Trade Agreements that Change Immigration Law

House Judiciary Committee Chairman James Sensenbrenner (R-Wisconsin) has been vocal about his opposition to substantive changes to U.S. law made in trade agreements without formal Congressional consultation. Sensenbrenner highlighted the case of the North American Free Trade Agreement (NAFTA) and stated that the Chile and Singapore FTAs reflect the same "regrettable practice."

Sensenbrenner emphasized that Congress alone has the Constitutional right to legislate immigration issues and that the Judiciary Committee has made a bipartisan commitment to oppose any future trade agreement that includes substantive changes to U.S. immigration law.

Immigration Provisions "Overstep the Bounds" of USTR

Representative Sheila Jackson-Lee (D-Texas), Member of the House Judiciary Committee, strongly opposes the immigration provisions in the two agreements and believes that they "overstep the bounds" of the USTR. Jackson-Lee accused USTR of "cutting a deal" on immigration and keeping Congress from seeing it until it was too late to change it. For these reasons, Jackson-Lee implored Members to vote against the implementing bills.

Blumenauer Believes Chile FTA Is a Good "Overall" Model

Representative Earl Blumenauer (D-Oregon) said that the FTA with Chile gives the US the opportunity to regain competitive advantage over the EU and Canada. Blumenauer thinks that the FTA contains strong labor and environmental standards, and that it is important for the U.S. to "reinforce that in future agreements". Blumenauer added that the FTA would be a good "overall" model.

Crane Calls Singapore FTA "Watershed" for U.S. Trade Policy

Ways and Means Trade Subcommittee Chairman Philip M. Crane (R-Illinois) strongly supports the FTA with Chile and believes that it will help spur negotiations for the Free Trade Area of the Americas (FTAA).

Crane also strongly supports the Singapore FTA and described it as a "watershed for U.S. trade policy." Crane believes that the FTA will "lay the benchmark" for investment and IPR protection and enforcement provisions in future agreements. Crane was particularly pleased with Singapore's approval of the sale of certain types of "therapeutic" chewing gum.

Chile and Singapore FTAs Set "Horrible Precedent"

Representative Gerald D. Kleczka (D-Wisconsin) strongly criticized the labor and environmental and visa provisions in both FTAs as well as the ISI provision in the Singapore FTA. Kleczka believes that the passage of the FTAs sets a "horrible precedent" for the future, speculating that the agreements will increase income and job opportunities in Chile and Singapore, but not in the United States.

Chile and Singapore FTAs "Step Backward from Jordan FTA"

Although Representative Xavier Becerra (D-California) supported the FTAs, he expressed reservations about the labor standards, which he described as "a step backwards from the Jordan FTA." Therefore, he also objects to their use as models for future agreements.

Frank Opposes "Rigid" Capital Controls Provisions

Representative Barney Frank (D-Massachusetts) opposes both FTAs and urged a renegotiation, particularly of the "rigid" capital controls provisions.

OUTLOOK

The House passage of the two FTAs set the stage for full Senate consideration.

Senate Approves Singapore and Chile FTAs

SUMMARY

On July 31, 2003, the U.S. Senate approved the U.S.-Singapore Free Trade Agreement (S 1417) by a vote of 66-32. The Senate approved the U.S.-Chile Free Trade Agreement (S 1416) by a vote of 66-31. The Senate debated the agreements for seven hours.

The approval by the Senate secured the Congressional passage of the first two Free Trade Agreements (FTAs) under Trade Promotion Authority (TPA). President Bush is now expected to sign both agreements, after which the formal implementation starts on January 1, 2004.

Some senators protested over immigration provisions and urged the Administration not to include such provisions in future agreements.

ANALYSIS

On July 29, 2003, the U.S. Senate reached an agreement to debate the U.S.-Singapore Free Trade Agreement (S 1417) and the U.S.-Chile Free Trade Agreement (S 1416), and began formal consideration of both implementing bills. On July 31, 2003, the U.S. Senate approved the U.S.-Singapore Free Trade Agreement (FTA) by a vote of 66-32. The Senate approved the U.S.-Chile FTA by a vote of 66-31.

We highlight below the debate on the two FTAs.

Craig Says Visa Provisions do not Fall Under USTR Authority

Senator Larry Craig (R-Idaho) complained about the visa provisions in the two FTAs. Craig criticized United States Trade Representative (USTR) Robert Zoellick for going beyond his authority with these provisions. Craig voted against both agreements.

Dorgan Thinks Visa Provisions will Increase Unemployment

Senator Byron Dorgan (D-North Dakota) criticized the lack of transparency of the negotiations of both FTAs. Dorgan particularly objected to the visa provisions in both FTAs, stating that such provisions "have nothing to do with trade", and will increase the unemployment rate in the U.S. Dorgan said that he would vote against both FTAs because the Administration "ought to be fixing old problems before creating new ones".

Feinstein Supports FTAs but Criticizes Visa Provisions

Senator Dianne Feinstein (D-California) said she would vote for both FTAs. She protested however against the temporary entry visa provisions of both FTAs. Feinstein described these provisions as a "major loophole" to bring foreign workers into the U.S., which would result in increased unemployment and a lower skill level in the U.S.

Hollings Thinks FTAs will Increase Unemployment in Textile and Apparel Sector

Senator Fritz Hollings (D-South Carolina) criticized the Administration's choice of trading partners. He objected particularly to the visa provisions in both FTAs. Hollings thought that the FTAs would increase unemployment in the U.S., especially in the textiles and apparel sector. He voted against both agreements.

Stevens and Murkowski say Chile FTA will have Negative Influence on the Salmon Industry

Senators Ted Stevens (R-Alaska) and Lisa Murkowski (R-Alaska) said that the FTA with Chile would increase the import of cheap salmon from Chile and would have a negative influence on the prices and employment in the American salmon industry. Stevens and Murkowski voted against the FTA with Chile.

Jeffords Sees FTAs as "an Attempt to Infringe on Congressional Rights"

Senator James Jeffords (D-Vermont) strongly opposed both FTAs, denouncing them as "an attempt to infringe on Congressional rights". Jeffords saw the visa provisions as the "greatest insult" of the FTAs. He considered the labor and environmental provisions of the FTAs a step back from the Jordan agreement. Jeffords voted against both FTAs.

Grassley Says TPA Consultation Procedures have been Respected Throughout Negotiations

Senate Finance Committee Chairman Charles Grassley (R-Iowa) described both FTAs as "state of the art agreements". Grassley named the tariff elimination, the elimination of the sanitary and phytosanitary (SPS) measures, and the chapters on telecommunications, services, intellectual property rights (IPR), and investment as specific benefits of the FTA with Chile. Grassley also pointed out that this FTA would have a significant influence on the negotiations of the Free Trade Area of the Americas (FTAA).

Zoellick named the provisions on banking, insurance, telecommunications, transparency and competition, and IPR protection as specific benefits of the FTA with Singapore. Grassley dismissed statements made by his colleagues that said that they had no influence in the negotiation process, stating that the consultation procedures of TPA had been respected throughout the negotiation process.

OUTLOOK

The approval by the Senate secured the Congressional passage of the first two FTAs under Trade Promotion Authority (TPA). President Bush now has to sign both agreements, after which the formal implementation starts on January 1, 2004.

In a July 31, 2003 statement, Zoellick praised the Congressional approval of the two FTAs. Zoellick said that this approval would give the U.S. "fresh momentum" in view of the approaching negotiations at the WTO Ministerial Meeting in Cancun.

U.S. and Saudi Arabia Sign TIFA; USTR Notifies Congress of Intent to Initiate FTA Negotiations with Bahrain and the Dominican Republic

SUMMARY

We want to alert you to the following developments:

- On July 31, 2003, The U.S. and Saudi Arabia sign a Trade and Investment Framework Agreement (TIFA).

- On August 4, 2003, the United States Trade Representative (USTR) notified Congress of its intention to initiate negotiations on a Free Trade Agreement (FTA) with Bahrain and the Dominican Republic.

ANALYSIS

I. U.S. and Saudi Arabia Sign TIFA

On July 31, 2003, the U.S. and Saudi Arabia signed a bilateral Trade and Investment Framework Agreement (TIFA). The TIFA creates a Joint Council on Trade and Investment, in which both parties will cooperate and coordinate to enhance and liberalize trade and investment at the bilateral, regional, and multilateral levels, including their efforts to advance the Doha Development Agenda (DDA).

TIFAs deal primarily with trade facilitation, tackling administrative and regulatory problems that can be an irritant to trade and investment. They are often used as a first step toward the negotiation of a Free Trade Agreement (FTA).

II. USTR Notifies Congress of Intent to Initiate FTA Negotiations with Bahrain and the Dominican Republic

On August 4, 2003, United States Trade Representative (USTR) Robert B. Zoellick formally notified Congress that in January 2004, the Administration intends to initiate negotiations for an FTA with Bahrain. The FTA with Bahrain would be a first step in implementing President Bush's initiative to advance economic reforms and openness in the Middle East and to establish a Middle East Free Trade Area (MEFTA) by 2013.

On August 4, 2003, Zoellick also formally notified Congress that the Administration intends to initiate FTA negotiations with the Dominican Republic. The Administration plans to integrate the Dominican Republic into the U.S.-Central America FTA (CAFTA).

OUTLOOK

The TIFA with Saudi Arabia and the FTA with Bahrain are the first steps in implementing President Bush's initiative to advance economic reforms and openness in the Middle East and to establish a Middle East Free Trade Area (MEFTA) by 2013.

The FTA with the Dominican Republic is a step to gain further momentum in the negotiations of a Free Trade Area of the Americas (FTAA).

Baucus Urges Administration to Refocus Trade Efforts on Asia; U.S. and Thailand Likely to Decide on FTA Negotiations "in the Next Few Weeks"

SUMMARY

At a July 24, 2003 event of the New America Foundation (NAF), Senator Max Baucus (D-Montana) criticized the U.S. Administration for being "virtually absent" in Asia, and urged them to adopt a more active trade agenda toward the region. Among other steps, Baucus suggested the U.S. should initiate World Trade Organization (WTO) dispute settlement procedures against China, as well as increase trade relations with Japan.

In related events, a representative from the Department of Commerce indicated at a Women in International Trade (WIIT) discussion on the Enterprise for ASEAN Initiative (EAI), that the U.S. and Thailand are likely to decide "in the next few weeks" on whether or not to negotiate an FTA.

ANALYSIS

I. Baucus Urges Administration to Refocus Trade Efforts on Asia

On July 24, 2003, the New America Foundation (NAF) held a discussion with Ranking Member of the Senate Finance Committee Max Baucus (D-Montana) on the U.S. trade policy toward Asia. Baucus criticized the U.S. Administration for negotiating Free Trade Agreements (FTAs) in a "scattered way" and for having an "ad hoc" trade policy toward Asia instead of a "strategic" trade policy.

Baucus urged the Administration to adopt a more "vigorous" trade policy toward Asia, and to take the following steps:

- Initiate World Trade Organization (WTO) dispute settlement procedures against China in order to make China lower agricultural barriers and increase protection of intellectual property rights (IPR);
- Seek greater market access into Japan (Baucus pointed out that U.S. exports to Japan have been declining for the last two years);
- Increase trade relations with India;
- Stop linking U.S. trade policy to U.S. foreign policy when choosing trade partners; and
- Increase the resources of the Office of the United States Trade Representative (USTR).

Baucus mentioned that Thailand, Vietnam, and Taiwan are countries that provide opportunities for U.S. companies. Baucus emphasized that Taiwan must improve its "dismal record" on IPR protection before the U.S. should take further steps to increase trade relations.

.II. U.S. and Thailand Likely to Decide on FTA Negotiations "in the Next Few Weeks"

On August 6, 2003, the Women in International Trade (WIIT) Asia Pacific section sponsored a discussion on the Enterprise for ASEAN (Association of South East Asian Nations: Burma, Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Thailand, Vietnam, Singapore) Initiative (EAI). The speakers included Philip Agress of the Department of Commerce, and Walter Lohman of the U.S.-ASEAN Business Council.

Agress indicated that:

- The accession of Laos, Cambodia, and Vietnam to the World Trade Organization (WTO) should be realized by 2005, which would make all the ASEAN countries WTO members.

- The U.S. would sign a Trade and Investment Framework Agreement (TIFA) with Malaysia "in the coming weeks";

- The U.S. and Thailand are likely to decide "in the next few weeks" on whether or not to negotiate an FTA.

Lohman indicated that the negotiations on a China-ASEAN FTA, an Asia Free Trade Area (AFTA), and a U.S.-Thailand FTA would have a positive influence on the business environment in the ASEAN countries and result in new opportunities for U.S. companies.

President Bush announced the EAI on October 26, 2002, with the goal of creating a "network of FTAs" with the ASEAN countries, using the FTA with Singapore as a model. As precursors to the FTAs, the U.S. pledged its support for ASEAN members acceding to the WTO. Other preliminary steps include negotiating TIFAs or Bilateral Investment Treaties (BITs) with the U.S. The U.S. currently has TIFAs with Brunei, Indonesia, the Philippines, and Thailand.

OUTLOOK

USTR officials have indicated on numerous occasions that the Administration considers the recently concluded FTA with Singapore as a model for future agreements in Asia. Thailand seems the most likely candidate for the next FTA with the U.S. in the region. USTR however has not yet formally announced with what Asian country it will pursue negotiations next.

USTR Requests ITC Studies of Economic Impact FTAA and U.S.-Dominican Republic FTA

SUMMARY

USTR recently requested ITC studies of the economic impact of the Free Trade Area of the Americas (FTAA) and of a U.S.-Dominican Republic Free Trade Agreement (FTA).

ANALYSIS

I. USTR Requests ITC Study of Economic Impact FTAA

Docket No.: 2322

Document Type: 332 Request

Filed By: Robert B. Zoellick

Firm/Org: United States Trade Representative

Behalf Of: United States Trade Representative

Date Received: July 21, 2003

Confidential: No

Commodity: Economic Impacts of FTAA

Country: None

Description: Letter to Deanna Tanner Okun, Chairman, USITC; requesting that the Commission conduct an investigation under section 332 (g) of the Tariff Act of 1930 examining the economic impacts that may result from the proposed Free Trade Area of the Americas

Letter to the Honorable Deanna Tanner Okun, Chairman, USITC; requesting that the Commission initiate an investigation pursuant to section 131 of the Trade Act of 1974 regarding the probable economic effect of providing duty-free treatment for imports of the Dominican Republic.

Status: Pending Institution

II. USTR Requests ITC Study of Economic Impact U.S.-Dominican Republic FTA

Docket No.: 2324

Document Type: 131 Petition

Filed By: Robert B. Zoellick

Firm/Org: United States Trade Representative

Behalf Of: United States Trade Representative

Date Received: August 6, 2003

Confidential: No

Commodity: U.S.-Dominican Republic Free Trade Agreement

Country: Dominican Republic

Description: A report including advice on the probable economic effect of providing duty-free treatment for imports of products of the Dominican Republic

Letter to the Honorable Deanna Tanner Okun, Chairman, USITC; requesting that the Commission initiate an investigation pursuant to section 131 of the Trade Act of 1974 regarding the probable economic effect of providing duty-free treatment for imports of the Dominican Republic.

ITC Report Concludes NAFTA and Other FTAs Contributed to U.S. Growth

SUMMARY

The International Trade Commission (ITC) released a report in August 2003 entitled "The Impact of Trade Agreements on the U.S. Economy". The report concludes that trade agreements were only one of many factors that contributed to U.S. growth in the past twenty years. The five trade agreements analyzed in the report, including NAFTA, have had a positive impact on the U.S. economy.

The report serves as a useful tool for Members of Congress to evaluate U.S. trade policy, especially given the TPA requirements for congressional consultations. The report provides further evidence that multilateral trade negotiations benefit the U.S. economy more than bilateral and regional negotiations.

The full report is available at www.usitc.gov.

ANALYSIS

I. Background

Section 2111 of the Trade Act of 2002[1] established that the ITC should report to the U.S. Congress on the effects of trade agreements on the U.S. economy.[2] As a result, the ITC study analyzes the following topics:

- Negotiation of trade agreements under Trade Promotion Authority (TPA)
- Economic changes in the U.S. since the beginning of the Tokyo Round
- Overall effects of trade liberalization on the U.S. economy
- Overall effects of trade liberalization on 10 different U.S. industry-sectors
- The impact of the North American Free Trade Agreement (NAFTA) on U.S.-Mexico trade

The ITC received comments from more than 22 industry associations, labor unions, and research organizations. Trade agreements supporters' included representatives of electrical and

[1] The Trade Act of 2002 reinstated fast track authority and approved other procedures such as Congressional oversight of trade negotiations.

[2] The ITC researched the effects of five trade agreements: the Tokyo Round, the Uruguay Round, the U.S.-Israel FTA, the U.S.-Canada FTA, and the North American Free Trade Agreement (NAFTA)

pharmaceutical manufacturers, and manufacturers as a whole. The associations criticizing the agreements were mainly from import-competing sectors such as steel, ceramic tile, and tuna.

II. Overall Findings

The ITC report concluded that:

- Trade agreements were one of several factors affecting U.S. growth
- Three additional factors affected U.S. growth: (i) U.S. trade policies, (ii) technological innovation, and (iii) demographic changes.
- Multilateral agreements –the Tokyo and Uruguay Round- impacted more the U.S. economy than preferential trade agreements.
- Trade growth in the United States has not been uniform. Trade with countries such as China or Mexico has grown much more rapidly than with other nations. Likewise, trade in U.S. sectors has grown at different rates.
- Between 1974 and 2001, the value of U.S. exports and imports grew from $0.5 trillion to $2.5 trillion.
- The value of exports has grown fastest in the following sectors: (i) machinery and equipment, (ii) transportation equipment, (iii) chemicals sectors, and (iv) miscellaneous manufacturers.
- Trade agreements have not been a determinant factor in increasing the wage gap between skilled and unskilled workers in the United States.
- Trade agreements, along with additional factors mentioned above raised U.S. GDP per capita and productivity growth. Between 1974 and 2001, GDP per capita rose from $19,163 to $32,352 while labor productivity in manufacturing increased 132 percent in the same period.

III. Effects On The U.S. Machinery And Electronics Sector

The effects of the five trade agreements on the U.S. machinery and electronics sector are:

- Other factors rather than the five trade agreements explain growth in production and trade in the electronics and machinery sector.
- Four factors contributed mainly to the sector's growth: (i) a considerable growth in demand, (ii) the development of new technologies, (iii) privatization and deregulation of the telecommunications industry, and (iv) the evolution of wireless communications and Internet services.

- With the exception of the U.S.-Israel FTA, all four agreements had a moderate but positive effect on the U.S. machinery and electronics sector growth.

- During 1991-2000, U.S. shipments of machinery and electronics increased at an annual rate of 2.5 percent (from 488.1 billion to $833.5 billion).

- In 2001, the value of shipments fell 18 percent due to the slowdown of the U.S. economy.

- Production increases in the sector were matched by gains in labor productivity, so total employment for electronics and machinery decreased from 3.7 million in 1978 to 3.6 million in 2001.

- The electronics sub sector –electronic components, computer and communications equipment had a significant growth in output and productivity since the implementation of the Tokyo Round Agreements in 1980.

- The real value of electronic component shipments quadrupled between 1978 and 2000, while the real value of communications, office, and computer equipment tripled.

IV. NAFTA Effects On U.S.-Mexico Trade

The impact of NAFTA on U.S.-Mexico trade can be summarized as follows:

- Total trade among NAFTA partners increased by approximately 128 percent, from $297 billion in 1994 to $676 billion in 2000.

- Reductions in U.S. and Mexican tariffs under NAFTA increased import shares in both countries. During 1990-2001, one third of the growth in the Mexican share of U.S. imports is attributed to U.S. tariff reductions and preferences under NAFTA. The ITC report also suggests that Mexican tariff reductions under NAFTA impacted significantly on U.S. shares of Mexican imports.

- Import shares increased more in industries with larger NAFTA tariff preferences. ITC estimates suggest that the U.S. share of Mexican imports increased most in the sectors with larger NAFTA tariff preferences towards U.S. goods. Those sectors were miscellaneous manufacturers, textiles, apparel, and footwear.

OUTLOOK

The Bush administration and supporters of trade liberalization in the U.S. Congress likely will welcome the conclusions of the ITC report. The fact that five trade agreements have all had a positive impact on the U.S. economy could strengthen domestic support for current trade negotiations.

The report could influence some U.S. legislators who have not yet formed concrete opinions on U.S. trade policy. However, since legislators will concentrate on the liberalization effects on their constituents, instead of the overall impact of trade liberalization, the report's findings are unlikely to alter the opinions of legislators in domestic industries adversely affected by trade liberalization.

MULTILATERAL

WTO Panel Upholds U.S. Sunset Review in Japan Steel Dispute

SUMMARY

A WTO Panel on August 14, 2003 in the decision on *United States - Sunset Review of Anti-dumping Duties on Corrosion-resistant Carbon Steel Flat Products from Japan* has dismissed a challenge by Japan to U.S. "sunset review" law and practice. Under the WTO *Anti-dumping Agreement*, definitive anti-dumping duties must terminate after five years, unless the importing country determines in a 'sunset review' that expiration of the duty "would be likely to lead to continuation or recurrence" of the dumping and injury. The Panel rejected Japan's arguments that many of the disciplines applicable to the initiation of anti-dumping investigations also apply at the sunset review stage.

ANALYSIS

I. Factual Background

This dispute arose from a 2000 determination of the Department of Commerce (DOC) that revocation of a 1993 anti-dumping duty order on certain steel products from Japan "would be likely to lead to continuation or recurrence of dumping." The DOC transmitted this determination to the U.S. International Trade Commission (ITC), along with a determination regarding the magnitude of dumping likely to prevail in the event of revocation. The ITC, in turn, determined that revocation of the order would be likely to lead to continuation or recurrence of material injury to a U.S. industry within a reasonably foreseeable time. Therefore, the anti-dumping order was not revoked.

II. Sunset Reviews under the Anti-dumping Agreement: Article 11.3

One of the key provisions invoked by Japan to support its claims was Article 11.3 of the *Anti-dumping Agreement.* Article 11.3 provides in part that an anti-dumping duty must be terminated no later than five years from its imposition unless the authorities determine "in a review initiated before that date on their own initiative", or "upon a duly substantiated request made by or on behalf of the domestic industry" that the expiration of the duty "would be likely to lead to continuation or recurrence of dumping and injury."

III. Panel Findings

A. "Fundamental Qualitative Differences"

The Panel began its report by expressing the view that "original investigations and sunset reviews are distinct processes with different purposes." The Panel stated that "[i]n a sunset review, the authorities are called upon to focus their inquiry on the *likelihood of continuation or recurrence* of dumping and injury in the event the measure were no longer imposed [original

emphasis]." By contrast, "in an original investigation, the authorities must investigate the existence of dumping, injury and causal link in order to warrant the imposition of an anti-dumping duty." Given what the Panel considered to be "fundamental qualitative differences in the nature of these two distinct processes", it mused that "it would not be surprising to us that the textual obligations pertaining to each of the two processes may differ."

The Panel's general observations related to the nature of sunset reviews had a strong bearing on its determinations related to specific issues, as discussed below.

B. Evidence: Investigation Standards Not Applicable to Sunset Reviews

Japan argued that the same evidentiary standards that apply to the self-initiation of original investigations under Article 5.6 (i.e. sufficient evidence of dumping, injury, and a causal link between the two) also applied to the self-initiation of sunset reviews.

The Panel rejected this argument. It stated that "Article 11.3 does not explicitly provide that the evidentiary standard of Article 5.6 (or any other evidentiary standard) is applicable to sunset reviews." Noting the use of cross-references in other provisions of the *Anti-dumping Agreement*, the Panel reasoned that "when the drafters intended to make a particular provision also applicable in a different context, they did so explicitly." Therefore, according to the Panel, the failure of the drafters to include such a cross-reference "demonstrates that they did not intend to make the evidentiary standards of Article 5.6 applicable to sunset reviews." The Panel noted that in the *German Steel* case, the Appellate Body drew the same conclusion from the absence of cross-references in analogous provisions of the SCM Agreement.

The Panel also repeated its view that "original investigations and reviews are different processes which serve distinct purposes." Therefore, it was "unsurprising" to the Panel that "the textual obligations applicable to the two are not identical."

However, the Panel made clear that its finding applied exclusively to the self-initiation of the sunset review, and this had no bearing on the evidentiary basis of the subsequent sunset review determination. Once the review was initiated, the authorities were still required "to establish, on the basis of positive evidence, that there is a likelihood of continuation or recurrence of dumping and injury."

C. Low Margin Of Dumping: Investigation "De Minimis" Standard Not Applicable to Sunset Reviews

Article 5.8 of the Agreement requires immediate termination of an anti-dumping investigation where the margin of dumping is *de minimis*, i.e. less than 2 per cent. The United States applies the 2 per cent *de minimis* standard during investigations, but applies a significantly lower standard of only 0.5% during sunset reviews. Japan argued that the 2% *de minimis* standard set out in Article 5.8 also applied during sunset reviews.

The Panel disagreed. It noted that Article 11.3 was silent on the issue of the *de minimis* standard, and that there were no cross-references between Article 11.3 and 5.8. Once again, the Panel noted that in *German Steel* the Appellate Body drew the same conclusions from the absence of cross-references in the parallel provisions of the SCM Agreement.

The Panel also rejected the argument that *de minimis* dumping should be considered as non-injurious, reasoning that "the terms 'dumping' and 'injury' have different meanings in the *Anti-dumping Agreement*, independent from one another." It said that injury is "not defined...in relation to any particular level of dumping."

D. Cumulation In Sunset Reviews: No "Negligibility Standard"

The *Anti-dumping Agreement* imposes certain disciplines with respect to when investigating authorities are permitted to conduct a "cumulative" injury analysis, i.e. when they may cumulatively assess the effect of imports of a product from several countries simultaneously. The Agreement allows for cumulative analysis where, among other things, the volume of imports from each country is "not negligible."

Japan argued that the quantitative "negligibility standard", which applies at the investigations stage by virtue of Articles 3.3 and 5.8, also applied to sunset reviews. The United States does not apply the negligibility standard during sunset reviews.

Once again, the Panel found for the United States. The Panel found that obligations pertaining to cumulation applied only during investigations, not during sunset reviews. The Panel said that neither the text nor the context of Article 11.3 had any reference to the negligibility standard.

Japan noted that the definition of the word "injury", set out in a footnote to Article 3, was said by its own terms to apply "under this Agreement." In Japan's view, this showed that the provisions of Article 3 pertaining to injury were not intended to be limited to the investigation stage only. The Panel showed some interest in this argument, noting that "this would seem to support the view that the provisions of Article 3 concerning injury may be generally applicable throughout the [Agreement] and are not limited in application to investigations." However, the Panel was unwilling to go so far as to find for Japan on this point, since that was "an issue we need not and do not decide." Moreover, the Panel added, rather vaguely, that even if the provisions of Article 3 applied generally throughout the Agreement, this would "not necessarily make every single provision" of that Article applicable.

E. Commerce's Sunset Policy Bulletin Not a"Measure" for Purposes of WTO Dispute Settlement

Japan argued that the U.S. practice of using pre-WTO dumping margins to determine the likelihood of continued or recurring dumping in a sunset review also violated U.S. obligations. Japan noted that this practice was provided for in the DOC's "Sunset Policy Bulletin", and was in fact applied by the DOC in all cases, thus making it a "de facto mandatory" legal instrument.

Japan's claims on this point foundered on the determination by the Panel that the Sunset Policy Bulletin was not a "measure" that could be challenged in WTO dispute settlement proceedings. The Panel said that the Sunset Policy Bulletin operated on the basis of the statute and the regulations, and did not, "in and of itself", mandate any obligatory behavior. The Panel noted that DOC could, under certain conditions, depart from the Bulletin. It saw "no justification for the creation of a 'de facto' mandatory category...that would transform an otherwise non-mandatory instrument into a mandatory one on the basis of a record of past actions."

Therefore, Japan's "as such" claim failed, since the Sunset Policy Bulletin was "not a mandatory legal instrument obligating a certain course of conduct and thus can not, in and of itself, give rise to a WTO violation."

The Panel similarly rejected Japan's "as applied" challenge to the Bulletin. One such claim related to the DOC's reliance on dumping margins established in the administrative review, which were calculated on the basis of "zeroing" (i.e. treating negative dumping margins as zero). In Japan's view, this breached the disciplines set out in Article 2.4. Similar to the approach it had taken on other issues, the Panel reasoned that "had the drafters intended to make the disciplines of Article 2 on the calculation of dumping margins also applicable in sunset reviews, they would have done so explicitly." The Panel did not believe that "the substantive disciplines in Article 2 governing the calculation of dumping margins in making a *determination of* dumping apply in making a *determination of continuation or recurrence of* dumping under Article 11.3 [original emphasis]." To hold otherwise, according to the Panel, would mean that "a new and full determination regarding the existence of dumping" would be necessary at the sunset review stage. The Panel found "no such obligation" in either Article 11.3 or Article 2. Therefore, the Panel found it unnecessary to examine Japan's "zeroing" claims.

The Panel was also of the view that the United States did not act inconsistently with Article 11.3 in this regard. The Panel found that the "evidence relating to the existence (or absence) of dumping during the period of imposition of the duty that may be examined by an investigating authority in a sunset review under Article 11.3 is not limited to a full-blown determination of dumping made pursuant to Article 2."

F. Sunset Review Determination: "Likelihood" Cannot Simply Be Assumed

At the same time, the Panel stressed that Article 11.3 was not "devoid of any obligation governing the requisite nature of a sunset review likelihood determination." Rather, as the Panel observed:

> "The text of Article 11.3 contains an obligation 'to determine' likelihood of continuation or recurrence of dumping. The requirement to make a 'determination' concerning likelihood therefore precludes an investigating authority from simply assuming that likelihood exists. In order to continue the imposition of the measure after the expiry of the five-year imposition period, it is clear that the investigating authority has to determine, on the basis of positive evidence, that termination of the duty is likely to lead to

continuation or recurrence of dumping. An investigating authority must have a sufficient factual basis to allow it to draw reasoned and adequate conclusions concerning the likelihood of such continuation or recurrence."

The Panel added that the "likelihood" of continuation or recurrence of dumping under Article 11.3 was "an inherently prospective notion." In the view of the Panel, it involved "a probabilistic judgment that must necessarily involve less certainty and precision than would be attainable under a purely retrospective analysis." Therefore, the Panel concluded, there was "a considerable difference in the degree of certainty and precision required in a determination of likelihood of continuation or recurrence of dumping under Article 11.3 and a determination of dumping under Article 2".

G. Company-Specific Determinations Not Required

Japan argued that that the *Anti-dumping Agreement* requires an investigating authority in a sunset review to determine the likelihood of continuation or recurrence of dumping for each known exporter, whereas the Sunset Policy Bulletin directs the DOC to make its determination on an order-wide basis.

The Panel recalled its earlier finding that the Sunset Policy Bulletin was not a "measure" challengeable in WTO dispute settlement. Therefore, it summarily dismissed the "as such" claim. In considering the "as applied" claim, the Panel stated that the obligation in Article 6.10 to calculate margins of dumping on a company-specific basis did not operate so as to require that the "likelihood" determination under Article 11.3 also had to be made on a company-specific basis.

H. Continuation Or Recurrence Of Dumping: "Likely" Or "Not Likely"?

As noted above, Article 11.3 requires the termination of an anti-dumping duty after five years, unless the authorities determine that the expiry of the duty would be "likely" to lead to continuation or recurrence of dumping and injury. Japan argued that the United States does not apply this "likely" standard, as it is required to do under Article 11.3, but rather applies a different, and WTO-inconsistent, "not likely" standard.

The Panel noted that the relevant U.S. statute provided for the same "likely" standard as Article 11.3, and was therefore WTO-consistent.

The Panel went on to observe that the DOC Regulations provided that in a sunset review, the Secretary of Commerce will revoke an order where he determines that revocation or termination is "not likely" to lead to continuation or recurrence of dumping. However, the Panel found that this was nevertheless WTO-consistent, since "the Regulations are subservient to the Statute" and "the Regulations do not change the standard applicable to sunset reviews under the statute."

Japan also argued that the Sunset Policy Bulletin used the "not likely" standard of the Regulations, and created an "irrebuttable presumption that dumping is 'likely' to continue." Japan's

"as such" claim was dismissed on the grounds that the Sunset Policy Bulletin was not challengeable, as indicated above.

With respect to the application of U.S. law and the Sunset Policy Bulletin in the present case, Japan argued that its exporter was denied the right to defend its interests in the sunset review, since the DOC refused to consider information submitted by the company after the expiration of the 30-day deadline provided for under U.S. law. The Panel dismissed this argument, stating that "[d]eadlines are...necessary and legitimate tools that allow investigating authorities to carry out and complete sunset reviews in a timely manner." The Panel did not consider the 30-day deadline to be unreasonable, and added that if procedural rules allow an investigating authority to disregard certain information, it could not be required to consider such information in its substantive analysis.

I. GATT Article X:3(a)

Japan challenged U.S. sunset review laws, as such, as a breach of the obligation under GATT Article X:3(a) to administer laws and regulations in a uniform, impartial and reasonable manner. However, the Panel adopted the Appellate Body's rulings from earlier cases that only the *administration* of laws and regulations can be challenged under Article X:3(a), not the laws and regulations themselves. The Panel found that Japan's "as such" allegations related to the substance, not the administration, of U.S. sunset review laws, and therefore fell outside the scope of Article X:3(a).

The Panel also dismissed the challenge to the administration of these laws as applied in the present case, in part because of its view that in order to sustain a claim of violation of Article X:3(a), the impugned action needed to have "a significant impact on the overall administration" of a Member's law, and "not simply on the outcome of the single case in question." In this case, the Panel said that Japan had not demonstrated "an impact on the overall administration of U.S. sunset review law."

OUTLOOK

This is the most recent of what will likely be a series of cases defining the obligations of WTO Members when they conduct five year sunset reviews.

In the November 2002 *U.S. - German Steel* case, the Appellate Body rejected an EC challenge to certain aspects of the sunset review provisions of U.S. countervailing duty law. The Appellate Body based its reasoning largely on technical grounds, pointing to the lack of cross-references in the SCM (Subsidies) Agreement between the initiation and the sunset review provisions. In the view of the Appellate Body, if the drafters of the SCM Agreement had wanted certain disciplines from the initiation stage to apply during sunset reviews, they would have done so by way of a "textual link." In an unusual and conspicuous display of deference to Members, the Appellate Body said that it did not wish to "upset the delicate balance of rights and obligations attained by the parties to the negotiations."

The *Japan Sunset* Panel largely applied the *German Steel* decision to the analogous provisions of the *Anti-dumping Agreement*. The *Japan Sunset* Panel also emphasized what it considered to be "fundamental qualitative differences" between original investigations and sunset reviews.

While there are obvious differences between investigations and sunset reviews, these were generally overstated by the *Japan Sunset* Panel. The Panel's rather narrow approach also failed to give sufficient attention to the clear presumption of termination of anti-dumping duties after five years. Moreover, although the Panel said that investigating authorities must have "a sufficient factual basis to allow it to draw reasoned and adequate conclusions concerning the likelihood of such continuation or recurrence", the absence of meaningful disciplines at the sunset review stage could well yield results inimical to this objective.

It is also worth stressing that the Panel's findings applied exclusively to the self-initiation of the sunset review, and not to the evidentiary basis required for the actual sunset review determination itself.

In any event, this decision is likely to be appealed. There are also other disputes now underway that raise similar claims. Thus, this Panel's decision is by no means the last word on sunset reviews.

Ministers Make Little Progress at Montreal Ministerial; Begin Final Preparations for Cancun Ministerial

SUMMARY

Twenty-five trade Ministers meeting in a "mini-Ministerial" at Montreal from 28-30 July made little progress on the Doha agenda. Now, all now depends on the intensive process of consultation and negotiation which will start in Geneva on 11 August and on the ability of the EU and the US to reach a bilateral understanding on the agriculture dossier which can be the basis for general agreement.

WTO Members have less than 20 working days in which to prepare draft agreements for submission to Ministers at the Cancun Conference on 10–14 September. At this stage no agreement has been reached on any of the nine substantive issues on which decisions will be needed.

I. Little Progress at the Montreal Mini-Ministerial

Like the previous mini-Ministerial at Sharm el-Sheikh on 21-22 June, the Montreal meeting was dominated by the need to break the impasse on agriculture. The announcement by the EU on June 26 of reforms in the Common Agricultural Policy had been the first positive development for the Round this year, creating hopes that there would now be sufficient flexibility in the EU position to permit agreement at or before Cancun on the negotiating modalities for agriculture. The EU was indeed able to engage in substantive discussions in Montreal, particularly in bilateral talks with the US, especially in regard to the market access (tariff reduction) formula. The Ministers requested the EU and the US to present in Geneva by mid-August a compromise proposal on agriculture, in the hope that their partners will be able to accept it. The Montreal meeting reached no conclusions on the other major issues discussed – market access for industrial products, the "Singapore issues" and TRIPS and Health. Though some progress was made, Ministers emphasized the intensive effort that will be needed to bridge the remaining gaps in the short time available, and some expressed disappointment with the outcome from Montreal.

II. Geneva Process Intensifies

A first draft of the Ministerial declaration was circulated on 18 July by the Chairman of the General Council, Ambassador Perez del Castillo of Uruguay. He emphasized that it is merely a skeleton, indicating the present state of negotiations on each agenda item: it makes clear that as yet there is no agreement on any one of the nine substantive decisions which Ministers will be required to take at Cancun. It contains no "declaratory " language and will function simply as the introductory text to which the negotiated agreements will be attached. This is intended to minimise time spent in negotiating the language of the declaration itself.

The Chairman will begin intensive, non-stop consultations in a committee of Heads of Delegation on 11 August, focusing on each of the substantive issues in turn. Negotiation of the final draft will be concentrated in the week of 18-22 August; it is understood that the first day of this week will be devoted to agriculture. The text will be considered by the General Council on 25-

26 August and then sent forward to Ministers. If there is no agreement at that stage on the texts of major elements such as the modalities for agriculture and industrial products, the Chairman and the Director General, Dr Supachai, will face a delicate decision on the manner in which the current state of the work should be presented; they will no doubt wish to avoid sending forward a text full of square brackets, as at Seattle.

III. TRIPS and Health: Greater Signs of Flexibility

It had been hoped that the Montreal meeting would resolve the issue of TRIPS and Health, following the indications of flexibility shown by the US at Sharm el-Sheikh, in the sense that it might no longer insist on a predetermined list of diseases for which very poor countries would be allowed to invoke compulsory licensing in order to import essential patented medicines. It is still the general hope that this issue will be settled before Cancun – as was agreed at the G8 Summit in Evian: though it is not really a trade issue its symbolic importance is such that failure to settle it could seriously compromise prospects for Cancun. The problem is to provide a safeguard against diversion onto other markets of drugs produced under compulsory license for distribution in the poorest countries. At this stage, the US is still insisting that such a safeguard would be legally binding while developing countries favor a more flexible approach.

IV. Agriculture: CAP Reforms and the Impasse on Modalities

The complexity of the EU's CAP reforms and the extent of the discretion left to individual member states in implementing them make it difficult to assess their potential value in terms of liberalization within the Doha remit. Other delegations have therefore given the reforms a cautious welcome, and are waiting to see how they are reflected in the EU's negotiating position. It seems clear that the EU can now easily meet the targets for reduction of domestic support in the draft modalities proposed by Stuart Harbinson; indeed, at Montreal the EU indicated readiness to reduce domestic support by 60% rather than the 55% it proposed last year. It is less clear what the reforms would mean in terms of reduction of export subsidies; the Commission has said they could go further than the 45% reduction they initially proposed and could abolish export subsidies for certain products. For market access, the third pillar of the agriculture negotiations and the major priority of the US and many others, the reforms imply no change in the EU's current position, and this has been the main subject of bilateral discussion with the US.

Further discussions between the US and the EU will focus mainly on the possibility of a compromise between the "Uruguay Round" formula of average tariff reductions subject to agreed minima, which is favoured by the EU, Japan and some developing countries, and the "Swiss" harmonization formula, which would impose deeper cuts on high tariffs and is the preference of the US and other major exporting countries. However it is by no means certain that any agreement between the US and the EU would be acceptable to others and the EU is signaling that no deal on agriculture would be possible without agreement on additional protection under the TRIPS agreement for geographical indications for a range of products other than wines and spirits. This is a very difficult issue in its own right; the EU is seen as the major potential beneficiary of any extension of protection and agricultural exporters are unwilling to concede this advantage as part of the deal on agriculture. Commissioner Fischler, on the other hand, has said that GIs must form part of the agriculture negotiating modalities.

V. The Singapore Issues: Still Deadlocked

The EU, together with Japan, will also be the major *demandeur* at Cancun in relation to the four "Singapore issues" – investment, competition policy, transparency in government procurement and trade facilitation. These too are therefore linked with the EU's ability to deliver on agriculture, in the sense that it will be looking for compensating gains on the Singapore issues. On all of them it will be necessary to agree on modalities as a condition for the launching of substantive negotiations. They have been treated since 1996 as a set of linked issues, and the EU will want to deal with them at Cancun as a package so as to increase the likelihood of agreement to negotiate on the most contentious issues, investment and competition. The weakness of this tactic is that the developing countries which most oppose investment and competition are not *demandeurs* for trade facilitation or procurement either; there is no trade-off as far as they are concerned. Twelve developing countries issued on 8 July a paper in which they stated that there is no consensus on launching negotiations on all four Singapore issues. But other countries which attach importance to trade facilitation in particular will not want to see it frustrated by deadlock on investment, which is the most difficult of the four. Whether and when to delink the four issues is therefore the first problem.

India has indicated great political difficulty in agreeing to negotiate on investment, and has stressed the need for modalities to define the coverage and objectives of any negotiations: the EU and Japan have favoured largely procedural modalities, which would leave it to the negotiations to determine how far Members wish to go. The most important element of uncertainty is the scope of any agreement – in particular whether it would cover only foreign direct investment or portfolio investment in addition. The US favours a broad agreement which would not undermine disciplines in existing bilateral investment agreements, and because the likelihood of an ambitious agreement is slim, given the opposition of India and others, it has not been a *demandeur* for negotiations on investment in the WTO. After agriculture, these are the most difficult problems facing Ministers at Cancun.

VI. Non-Agricultural Market Access: Wide Divergences on Modalities

Wide divergences remain over the modalities for negotiations on industrial tariffs proposed by the Chairman of the negotiations, Ambassador Pierre-Louis Girard of Switzerland. At one extreme the US and New Zealand seek complete elimination of tariffs by 2015; at the other many developing countries insist on greater flexibility than Girard has proposed (which has been criticised as excessive by the US, the EU and others) and are concerned to preserve existing margins of preference. Girard's current proposal provides developing countries with considerable flexibility in tariff reduction but has been criticised from different standpoints by a wide range of countries. Japan and Korea have opposed the inclusion of leather and fishery products among the seven categories proposed by Girard for tariff elimination.

At a meeting of the Negotiating Group on 9-11 July, Girard indicated that he might circulate a revised draft in mid August, given sufficient feedback from Members. A proposal by the island states Fiji, Mauritius and Papua New Guinea emphasised the special needs of small economies and their desire to preserve preferential margins such as those granted under the Generalised System of Preferences. The US also submitted a proposal on non-tariff barriers

(hitherto somewhat neglected) suggesting a "vertical modality" approach whereby NTBs would be eliminated within particular industries such as automobiles or textiles.

VII. Negotiations on Rules: Technical Progress Made

Some progress has been made on technical issues in the Negotiating Group on Rules, dealing with the clarification and improvement of disciplines on anti-dumping, subsidies, fishery subsidies and regional trade agreements. 29 proposals have been made on these subjects the majority dealing with anti-dumping, which is a major priority for Japan and a number of advanced developing countries. There is also increasing participation in discussion of subsidy discipline; major differences persist on fishery subsidies. Progress has been slow in discussion of the rules relating to regional trade agreements.

No decisions need to be taken at Cancun on Rules-related issues.

VIII. Trade in Services: More Offers on the Table; Little Substance

Thirty countries, the EU counting as one, have so far submitted initial offers of improved commitments on services. Eight more are expected before Cancun. It is known that some countries are holding back offers until they see progress in other Areas, especially agriculture. The number of offers is therefore relatively satisfactory, but in terms of trade liberalizing effects they are not impressive. They too are part of the single undertaking and will not produce substantial results in isolation. The Chairman of the services negotiations, Ambassador Jara of Chile, reported to the Trade Negotiations Committee on 11 July that "the quality of some offers leaves much to be desired in respect of coverage of sectors and modes of supply as well as the depth of commitment". He also suggested that Ministers in Cancun should indicate "landmark dates by which Members would improve their initial offers". Developing countries, many of whom have not yet submitted their first offers, were unenthusiastic about this suggestion.

Developing countries have also expressed disappointment with the quality of offers so far made on mode 4 (the movement of natural persons) which is a priority for most of them. This is an issue on which the US, having long given a lead alongside India, now finds difficulty, post September 11, in making concessions; commitments on movements of persons made in its bilateral free trade agreements with Chile and Singapore have attracted criticism.

Services is most unlikely to be a controversial issue at Cancun, but some developing countries have said that they will voice their dissatisfaction with the continuing deadlock in the negotiations on an emergency safeguard mechanism for services. Though it has made much more progress than the concurrent negotiations on subsidies and government procurement of services, the negotiation on safeguards has produced no agreement on the desirability or feasibility of adding a safeguard mechanism to the GATS, and it is most unlikely to do so by the current deadline of 15 March 2004. By no means all developing countries share the desire for a safeguard mechanism, which some fear could be used all too easily in the case of mode 4 commitments; but the issue could be presented in Cancun as another instance of neglect of a negotiating commitment of importance to developing countries.

IX. Development Issues: Major Differences Remain

It will also be necessary at or before Cancun to agree on the treatment of the 85 outstanding issues concerning special and differential treatment of developing countries and the implementation of Uruguay Round agreements. Ambassador Perez del Castillo has been consulting on these in order to agree on those which could be settled at Cancun and those to be remitted for further work.

OUTLOOK

Despite the intensive efforts that will be made throughout August there is a clear possibility of failure at Cancun, in the sense of inability to reach the necessary decisions on modalities for agriculture, non-agricultural market access and the Singapore issues. Disagreement on agriculture would almost certainly entail disagreement elsewhere and would probably make it necessary to extend the deadline for the Doha Round beyond 31 December 2004. Commissioners Lamy and Fischler in Montreal recognized that in some circumstances extension might be unavoidable, though they remain strongly committed to the current deadline. It has always been understood that the three-year timescale for this massive negotiation is extremely ambitious, particularly if new disciplines are to be negotiated on the Singapore issues.

Nevertheless, Cancun is not a make-or-break occasion like the Seattle Conference. It is not a matter of launching or concluding a Round, but of steering and adding momentum to an ongoing negotiation. A good meeting at Cancun would indeed add momentum, and even a difficult meeting, if properly managed, can clarify the political realities. The "failure" of the mid-term meeting at Montreal in the Uruguay Round led to three years of sustained and successful negotiation on all issues except agriculture. Extension of the Doha deadline beyond 2004 would be unwelcome, but by no means disastrous.