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WTO AND REGIONAL TRADE AGREEMENTS

July 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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- House Ways and Means Trade Subcommittee Chairman Philip Crane (R-Illinois) and House Ways and Means Committee Ranking Member Charles Rangel (D-New York) introduced H.R. 1769, which would replace the ETI with a permanent deduction that reduces the effective corporate tax rate applying to the taxable income of a company that can be attributed to "U.S. production activities."

- House Ways and Means Committee Chairman Bill Thomas (R-California) is also preparing a bill, which will be similar to his bill of 2002 and repeal the ETI in favor of a number of international tax incentives. The bill will likely include several new provisions such as an expansion of the research and development (R&D) tax credit and a temporary lowering of the rate on foreign earnings repatriated to the United States.

- Senate Finance Committee Member Orrin Hatch (R-Utah) is constructing an ETI repeal bill that would also include a number of international tax incentives. Hatch is expected to introduce his bill after the July 4th Congressional recess.

CATO Study Urges Elimination of Tariffs on Light Trucks

In his latest study, Daniel Ikenson, policy analyst for the Cato Institute's Center for Trade Policy Studies, states that there is no reasonable explanation for the existence of the 25 % percent on imported light trucks and advocates its immediate and unilateral elimination.

Free Trade Agreements and Bilateral Initiatives

Senators Express Support for Chile and Singapore FTAs

On June 17, 2003, the International Trade Subcommittee of the U.S. Senate Finance Committee held a hearing to discuss the implementation of the recently concluded Free Trade Agreements (FTAs) with Chile and Singapore. The Senators who testified all expressed their strong support for both agreements, and urged Congress to approve the implementing legislation.

Deputy United States Trade Representative (USTR) Peter F. Allgeier testified on behalf of the Bush Administration. The Subcommittee also heard testimony from a variety of industry, agriculture, and civil society groups. Allgeier and industry groups noted the precedent setting value of the agreements for intellectual property, electronic commerce and other sectors.

On June 13, 2003, the Bush Administration sent draft implementing legislation for the U.S.-Singapore FTA to the House Ways and Means Committee and the Senate Finance Committee. On June 17, 2003, the Administration sent draft implementing legislation for the U.S.-Chile FTA.

Administration Sends Final Implementing Legislation of Singapore and Chile FTAs to Congress; House Judiciary Committee Approves Final Implementing Legislation

On July 10, 2003, the House Judiciary Committee, the House Ways and Means Committee, and the Senate Finance Committee held mock markups of the draft implementing legislation of the U.S.-Chile and U.S.-Singapore Free Trade Agreements (FTAs).

The House Judiciary Committee approved the draft implementing legislation of both FTAs, after amending the visa provisions. The House Ways and Means Committee and the Senate Finance Committee approved the draft implementing legislation of both FTAs without recommending any further changes.

The Administration transmitted the final implementing legislation of the FTAs on July 15, 2003. The House Judiciary Committee approved the final implementing legislation on July 16, 2003, the first official step toward Congressional approval of the FTAs.

Members have indicated that they hope Congress will approve the legislation before the August recess, which begins on July 25, 2003.

Middle East Trade Preference Program Could Serve as a Precursor to MEFTA; Zoellick Outlines MEFTA Roadmap

On June 20, 2003, the CATO Institute held a discussion on the proposed U.S.-Middle East Free Trade Area (MEFTA). Speakers considered MEFTA a critical element to promote peace in the region.

During a visit to the Middle East on June 18-23, 2003, United States Trade Representative (USTR) Robert Zoellick discussed the U.S.-Bahrain FTA, outlined the roadmap for MEFTA, and urged Egypt to take the necessary reforms to be a U.S. FTA candidate.

US and Mexico Announce Partnership for Prosperity Initiatives

A June US-Mexico meeting on the Partnership for Prosperity initiative focused on the best ways to improve economic development in Mexico and strengthen economic and other forms of bilateral cooperation.

The Partnership for Prosperity session resulted in various initiatives intended to:

- Reduce the costs of bilateral financial transactions;
- Improve competitiveness and infrastructure in Mexico;

- Increase bilateral ties and development of small companies; and,

- Strengthen education and training exchange between the countries.

EU and US Officials Discuss Trade and Non-Trade Related Initiatives at High-level Bilateral Summit in Washington

On June 24-25, 2003, top-ranking officials from the US and the EU met in Washington for a high-level bilateral summit. Among the EU delegation were President of the European Commission Romano Prodi, President-in-Office of the European Council and Greek Prime Minister Constantine Simitis, Vice President and Commissioner for Transport and Energy Loyola de Palacio, and Commissioners for Enterprise and Information Society and Trade Erkki Liikanen and Pascal Lamy. On the U.S. side, President Bush was accompanied by an "unprecedented number" of Senior Administration officials, including Vice President Dick Cheney, Secretary of State Colin Powell, National Security Adviser Condoleezza Rice, Attorney General John Ashcroft, Trade Representative Bob Zoellick, and many others.

Discussions focused on various matters of mutual interest, including:

- Launching negotiations on a Transatlantic Open Aviation Area Agreement ("OAA");

- Introducing changes to the Transatlantic Business Dialogue ("TABD");

- Forging initiatives on trade, regulatory cooperation and financial markets;

- Increasing cooperation on the "Hydrogen Economy"; and

- Concluding of Mutual Legal Assistance and Extradition Agreements ("MLAEs") and initiatives against proliferation of Weapons of Mass Destruction.

Taiwan Continues to Pursue U.S.-Taiwan FTA

Taiwan continues to seek support from the United States to conclude a free trade agreement even though an evaluation report issued by the United States International Trade Commission on October 21, 2002 concluded that such an agreement would not result in significant economic gains.

Thailand and US Unlikely to Launch FTA Negotiations Before 2004

At the meeting of the APEC Ministers Responsible for Trade in Khon Kaen on June 2-3, 2003, one of the top agendas in the bilateral session between the United States and Thailand was the possibility of launching bilateral free trade agreement (FTA) negotiations in 2004. Thailand, a long-time security and economic ally of the US, aspires to become the second country in Southeast Asia to conclude an FTA with the US. Despite the fact that both sides expressed interest in starting FTA negotiations in the near future, the US has specified clearly that Thailand needs to improve its regulations and enforcement measures in some areas, such as custom valuation, protection of intellectual property (IP), as well as to further liberalize its telecommunication

industry *before* FTA negotiations can begin. Furthermore, the US indicated that investment and trade between the two countries must be further expanded under the TIFA framework before they can move on to a FTA.

Some analysts believe Thailand is ready to modify domestic regulations and pass new laws by the end of 2003 or early next year to meet the demands of the US. However, Thailand is afraid that the US might demand for more concessions under the Joint Council on Trade and Investment in return for beginning the FTA negotiations process.

Thailand, on the other hand, has the upcoming expiration of the U.S.-Thailand Treaty of Amity and Economic Cooperation in January 2005 to pressure the US into launching FTA negotiations more rapidly. Under this treaty, U.S. entities operating in Thailand receive special economic privileges in many areas such as investments and professional services. Analysts believe that Thailand is willing to transfer the benefits from the treaty into the FTA, provided FTA negotiations begin, if not completed, before 2005.

US and Pakistan Sign TIFA

On June 25, 2003, the United States and Pakistan signed a Trade and Investment Framework Agreement (TIFA). TIFAs are bilateral agreements establishing a mechanism for consultations on trade and investment policy, thereby aiming to encourage the liberalization of trade and investment.

TPSC Requests Comments on Duty Drawback and Deferral in FTA Negotiations

On July 2, 2003, the Trade Policy Staff Committee (TPSC), an interagency body chaired by the Office of the United States Trade Representative (USTR) posted in the Federal Register (68 FR 39614) a request for comments on duty drawback and deferral in FTA negotiations with Central America, Australia, Morocco, the Southern African Customs Union and the countries participating in the Free Trade Area of the Americas (FTAA).

Customs

Customs Will Propose Advance Electronic Manifest Rules in Late June

Douglas Browning, Deputy Customs Commissioner, recently addressed the Washington International Trade Association regarding "The New Paradigm: Customs and Homeland Security." Browning discussed Customs transition to the Department of Homeland Security as well as the range of programs Customs has developed in an attempt to balance trade facilitation and security concerns. Browning stated that Customs would release proposed rules for advance electronic manifest information for all types of cargo at the end of June.

Customs Advisory Committee Discusses Organization Under DHS

On June 20, 2003, the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service (COAC) held a meeting to discuss, among other things, the role of the Customs and Border Protection agency (CBP) under the Department of Homeland Security (DHS).

- The Treasury Department will cooperate with the DHS on the revenue collection operations of the CBP, while the DHS will solely control the non-revenue operations of the CBP. DHS is considering a regional structure for its organization, but no details have been decided.

- C-TPAT is not likely to disappear, but the reorganization could cause processing of cargo from C-TPAT members to take longer than anticipated. The next step is to expand the C-TPAT program outside the U.S.

- Deputy Customs Commissioner Douglas Browning announced that the CBP plans to introduce uniform global standards for customs procedures at the next World Customs Organization (WCO) convention.

DHS Publishes Rules to Enhance Maritime Security

On July 1, 2003, the Coast Guard and the Department of Homeland Security (DHS) published a series of six interim rules in the Federal Register to implement certain maritime security requirements of the Maritime Transportation Security Act (MTSA) of 2002. The regulations require portions of the maritime industry to complete security assessments, develop security plans, and implement security measures and procedures in ports and waterways.

The interim rules comprise:

- National maritime security (68 FR 39239);

- Area maritime security (68 FR 39284);

- Vessel security (68 FR 39292);

- Facility security (68 FR 39315);

- Outer continental shelf facility security (68 R 39338); and

- Automatic identification system and vessel carriage requirement (68 FR 39353).

Customs Publishes Notice of Intent to Distribute Byrd Amendment Funds for Fiscal Year 2003

On July 14, 2003, the Bureau of Customs and Border Protection ("Customs") and the Department of Homeland Security (DHS) announced that Customs intends to distribute the assessed

antidumping or countervailing duties, pursuant to the Continued Dumping and Subsidy Offset Act of 2000 ("Byrd Amendment"), for Fiscal Year 2003.

GSP

President Extends GSP Benefits for Developing Countries; USTR Extends Deadline for Submission of Petitions for 2003 GSP Review and Initiates Review to Consider Algeria as a Beneficiary Country

We want to alert you to the following GSP developments:

- On July 1, 2003, President Bush signed a proclamation expanding the Generalized System of Preferences ("GSP") program.

- On July 16, 2003, the Office of the United States Trade Representative (USTR) extended the deadline for the submission of petitions for the 2003 Annual GSP Product and Country Eligibility Practices Review.

- On July 16, 2003, the USTR announced the initiation of a review to consider the designation of Algeria as a beneficiary developing country under the GSP program.

Multilateral and WTO Developments

GWTO Members at a Critical Stage in Preparations for the Cancún Ministerial; Draft Cancún Ministerial Text Released

WTO Members are at a critical stage in preparations for the mid-term Ministerial Conference in Cancún, Mexico, September 10-14. The Doha Development Agenda ("Round") thus far has been widely perceived and reported as stalled; WTO Members have missed one negotiating deadline after another. Two dozen trade ministers meeting at the "mini-ministerial" in Sharm el-Sheik, Egypt from June 21-22 did not produce the desired impetus for negotiations. The United States, however, did indicate additional flexibility in its position on the TRIPS and Public Health issue. It remains to be seen if the upcoming mini-ministerial in Montreal from July 28-30 will conclude negotiations on the TRIPS and Public Health issue and lend additional momentum to the Round.

The current impasse on agriculture in particular threatens a successful outcome at Cancún and the December 2004 deadline for the Round as a whole. Nevertheless, the agreement reached on June 26 among European Union agriculture ministers on proposals for the reform of the Common Agricultural Policy ("CAP"), represents one of the first positive developments in the Round this year. A major theme in Geneva now is that success at Cancún, if not for the Round, depends on whether the EU's CAP reforms can be translated into additional negotiating flexibility on modalities for agriculture.

Meanwhile, WTO Members have begun preparations of the "Draft Cancún Ministerial Text" based on a text released on July 18 by General Council Chairman Carols Perez del Castillo in

cooperation with WTO Director General Supachai Panitchpakdi. The draft text presents a basic outline of the state of negotiations in the run-up to Cancún, including modalities (negotiating approaches and targets) for agriculture and industrial goods, TRIPs and Public Health, developing country concerns, the launch of negotiations on the "Singapore Issues": investment, competition, trade facilitation and transparency in government procurement, and other issues. WTO negotiators intend to refine the text prior to presenting it to trade ministers to finalize at Cancún.

GAO Releases Database of China's WTO Accession Agreement

In a June 13, 2003, letter to Senate Finance Committee Chairman Charles Grassley (R-Iowa), Ranking Member Max Baucus (D-Montana), House Ways and Means Committee Chairman Bill Thomas (R-California), and Ranking Member Charles Rangel (D-New York), the General Accounting Office (GAO) announced the public release of an electronic database of the major components of China's World Trade Organization (WTO) Accession Agreement.

Domestic Agriculture Industry Opposes Negotiation of Domestic Support in Regional and Bilateral FTAs; Urges Revision of Harbinson WTO Proposal

On June 18, 2003, the House Committee on Agriculture held a hearing to review the multilateral and bilateral agricultural trade negotiations. Representatives from various agricultural sectors in the US, such as horticulture, grain, fruits and vegetable and other processing industries testified.

Many industries sharply opposed Harbinson's proposal on agricultural negotiating modalities and argued that the US should not negotiate domestic support in the regional or bilateral FTA negotiations.

Industry representatives emphasized that bringing trade partners into compliance with the terms of trade agreements is equally important, if not more important, than reaching an agreement. Some of the agricultural industries are unsatisfied with lack of rules enforcement in foreign countries such as China, Mexico and Russia. They asked USTR to work harder to ensure that US trading partners comply with their obligations.

Generally, industry representatives testified that they are competitive and efficient, but subsidies and other trade distorting measures in other countries make them less competitive. As soon as they can compete on the same level of playing field, they argue, they expect to increase exports and global market share.

WTO Panel Rules Against US Safeguard Measure on Steel

A WTO Panel on July 11, 2003 has ruled that the U.S. safeguard measure on steel violates GATT Article XIX and the Agreement on Safeguards.

In March 2002, the United States imposed definitive safeguard measures on ten steel product groups, in the form of additional tariffs ranging up to 30%. The WTO-consistency of these measures was challenged by the EC, Japan, Korea, China, Switzerland, Norway, New Zealand and Brazil.

The Panel found that the U.S. measure was WTO-inconsistent for the following reasons:

- Failed to provide a "reasoned and adequate explanation" that "unforeseen developments" had resulted in increased steel imports, thereby causing serious injury to U.S. producers. The United States had argued that the "unforeseen circumstances" were the Asian and Russian financial crises, the continued strength of the U.S. market and U.S. dollar, and "the confluence of all these events." However, the Panel found that, in light of the complexity of the unforeseen developments argued by the United States, there was a need for "more elaborate demonstration and supporting data";

- Did not provide a reasoned and adequate explanation of how the facts supported the U.S. determination regarding "increased imports" of foreign steel;

- Failed to establish a "causal link" between increased imports and the serious injury. The Panel used "coincidence analysis" to assess "the temporal relationship between the movements in imports and the movements in injury factors." Applying earlier Appellate Body jurisprudence, the Panel said that the absence of coincidence would require "a compelling explanation" as to why a causal link nevertheless existed. In the view of the Panel, the United States did not show a "genuine and substantial relationship of cause and effect" between increased imports and serious injury; and

- Breached the principle of "parallelism" by including imports from the free-trade partners of the United States for the purpose of the injury analysis, and then excluding these countries from the application of the safeguards measure.

USTR has announced its intention to appeal.

REPORTS IN DETAIL

UNITED STATES

Hatch May Introduce ETI Legislation After July Recess

SUMMARY

The need to bring U.S. law into compliance with a WTO decision that found that the Extraterritorial Income Exclusion Act ("ETI") is an illegal export trade subsidy brought forth the following legislative proposals:

- House Ways and Means Trade Subcommittee Chairman Philip Crane (R-Illinois) and House Ways and Means Committee Ranking Member Charles Rangel (D-New York) introduced H.R. 1769, which would replace the ETI with a permanent deduction that reduces the effective corporate tax rate applying to the taxable income of a company that can be attributed to "U.S. production activities."

- House Ways and Means Committee Chairman Bill Thomas (R-California) is preparing a bill, which will be similar to his bill of 2002 and repeal the ETI in favor of a number of international tax incentives. The bill will likely include several new provisions such as an expansion of the research and development (R&D) tax credit and a temporary lowering of the rate on foreign earnings repatriated to the United States.

- Senate Finance Committee Ranking Member Orrin Hatch (R-Utah) is constructing an ETI repeal bill that would also include a number of international tax incentives. Hatch is expected to introduce his bill after the July 4th Congressional recess.

ANALYSIS

The need to bring U.S. law into compliance with a WTO decision that found that the Extraterritorial Income Exclusion Act ("ETI") is an illegal export trade subsidy brought forth a variety of legislative proposals. We highlight the most important initiatives below.

I. Crane/Rangel Bill Would Replace ETI With Reduction of Tax Rate on US Production Activities

House Ways and Means Trade Subcommittee Chairman Philip Crane (R-Illinois) and House Ways and Means Committee Ranking Member Charles Rangel (D-New York) introduced H.R. 1769, which would replace the ETI with a permanent new deduction that reduces the effective corporate tax rate applying to the taxable income of a company that can be attributed to "U.S. production activities." The proposed legislation would define U.S. production activities as

the manufacture, production, growth, or extraction of property eligible for the current FSC/ETI benefits, whether or not this property is actually exported.

The Crane/Rangel bill has garnered 116 cosponsors from both sides of the aisle. Corporate supporters of the bill include Boeing, Microsoft, Caterpillar and Honeywell.

II. Thomas Would Repeal ETI in Favor of International Tax Incentives

House Ways and Means Committee Chairman Bill Thomas (R-California) is setting the stage for a debate about how best to comply with the WTO decision, and is preparing a bill, which he could introduce soon after the July 4th recess.

Thomas's bill will likely be similar to his bill of 2002, and repeal the ETI in favor of a number of international tax incentives. The bill is expected to introduce new limits on earnings stripping, corporate inversions and corporate tax shelters. It is also likely that Thomas, in an attempt to widen support for his bill, will include several new provisions such as an expansion of the research and development (R&D) tax credit and a temporary lowering of the rate on foreign earnings repatriated to the United States. To offset these additional incentives, the bill could include other corporate "loophole closers".

The Coalition for Fair International Taxation, which consists of 26 corporations including Coca-Cola, Hewlett-Packard, and EDS, is pressing House Republican leaders to back the Thomas approach. The group contends that the Crane/Rangel bill does not do enough for non-manufacturers and actually penalizes U.S. companies that seek to compete overseas.

III. Hatch Also Prefers International Tax Incentives, and is Expected to Introduce Legislation After July 4th Recess

Senate Finance Committee Member Orrin Hatch (R-Utah) is constructing an ETI repeal bill that will adopt the approach of Thomas's bill and will also include a number of international tax incentives. It could further contain a provision to allow companies to depreciate equipment investments over a shorter period of time, and a permanent extension and expansion of the R&D tax credit. Hatch is expected to introduce his bill sometime after the July 4th recess.

Hatch's approach differs from the position of Senate Finance Committee Chairman Charles Grassley (R-Iowa) and Ranking Member Max Baucus (D-Montana). Grassley and Baucus both prefer the idea of a credit for domestic manufacturers as a replacement for the ETI. Chairman Grassley may hold hearings on the ETI issue in July 2003.

OUTLOOK

The pressure to resolve the ETI issue is mounting. European Trade Commissioner Pascal Lamy has said that the EU will press ahead with the $4.04 billion in WTO approved trade sanctions if the U.S. does not come into compliance by January 1, 2004.

CATO Study Urges Elimination of Tariffs on Light Trucks

SUMMARY

In his latest study, Daniel Ikenson, policy analyst for the Cato Institute's Center for Trade Policy Studies, states that there is no reasonable explanation for the existence of the 25 % percent on imported light trucks and advocates its immediate and unilateral elimination.

ANALYSIS

Forty years ago, the United States increased tariffs to 25% on imported light trucks as retaliation against the European Economic Community (EEC) for its decision to raise tariffs on imported chicken, and thus cut US producers off from the growing poultry market. In his latest study, "Ending the "Chicken War": The case for abolishing the 25 percent Truck Tariff", Daniel Ikenson, policy analyst for the Cato Institute's Center for Trade Policy Studies, states that there is no reasonable explanation for the existence of the tariff and advocates its immediate and unilateral elimination.

Ikenson discusses the following issues in the report:

- The "Chicken War" is over and the original regulatory purpose of the tariffs is gone. Soon after the imposition of the tariffs, the intended targets Volkswagen trucks practically disappeared from the US market.

- The tariff as protectionism is useless against foreign competitors, as the domestic truck producers the Big Three dominate the US market. Furthermore, the strongest foreign producers already manufacture trucks in the US.

The tariff is not useful as "a bargaining chip" something to be swapped for market access concessions abroad in trade negotiations. The absurdity of the truck tariff undermines the credibility of the overall US trade policy, when "the US lectures other countries on the virtues of free trade…and clings to trade barriers when no dislocation would have to be endured." By the immediate termination of the truck tariff instead of the gradual elimination, as proposed at Doha, "the Bush administration could lend real momentum to a global market-opening effort, the benefits of which go far beyond increased choice in buying pickup trucks."

OUTLOOK

The full CATO study is available on www.freetrade.org

Free Trade Agreements and Bilateral Initiatives

Senators Express Support For Chile and Singapore FTAs

SUMMARY

On June 17, 2003, the International Trade Subcommittee of the U.S. Senate Finance Committee held a hearing to discuss the implementation of the recently concluded Free Trade Agreements (FTAs) with Chile and Singapore. The Senators who testified all expressed their strong support for both agreements, and urged Congress to approve the implementing legislation.

Deputy United States Trade Representative (USTR) Peter F. Allgeier testified on behalf of the Bush Administration. Members of the Subcommittee questioned Allgeier on a wide range of subjects. The Subcommittee also heard testimony from a variety of industry, agriculture, and civil society groups.

Reports indicate that the Bush Administration has sent draft implementing legislation for the U.S.-Singapore FTA to the House Ways and Means Committee and the Senate Finance Committee. Formal Congressional consideration of the FTAs will commence when the Administration sends final implementing legislation to Congress.

ANALYSIS

On June 17, 2003, the International Trade Subcommittee of the U.S. Senate Finance Committee held a hearing to discuss the implementation of the recently concluded Free Trade Agreements (FTAs) with Chile and Singapore.

I. Thomas Believes Chile and Singapore FTAs Will Open Way for Other Agreements

International Trade Subcommittee Chairman Craig Thomas (R- Wyoming) noted that the FTAs with Chile and Singapore are very important because they will set the U.S. on the way to negotiate other FTAs in the Western Hemisphere and Southeast Asia.

Thomas said that he would be particularly interested in comments regarding the influence of the FTAs on (i) trade debts Chile has outstanding with the U.S., and (ii) on the trade in goods with Singapore.

II. Baucus Says Hearing Starts Formal Implementation Process

International Trade Subcommittee Ranking Member Max Baucus (D-Montana) expressed his strong support for both FTAs and said that they contain strong provisions on IPR, services, e-commerce, and even labor and environmental standards. He also stated that although both FTAs set a standard, the U.S. should always adapt their future agreements to the different partner countries.

Baucus characterized the hearing as the "kick-off" of the formal implementation process. Baucus hoped that both FTAs will pass Congress with “wide, bipartisan majorities”.

III. Senators Express Strong Support for Both FTAs

Senate Finance Committee Chairman Charles Grassley (R-Iowa) and Senate Appropriations Committee Ranking Member Christopher Bond (R-Missouri) expressed their strong support for both FTAs:

- Grassley was not present at the hearing, but left a written testimony, in which he named the services provisions in the Singapore FTA and the agriculture market access provisions in the Chile FTA as specific benefits. Grassley stated that the Senate will be considering both FTAs this summer, and pointed out that he looks forward to get them implemented before the August recess.

- Bond said that the FTA with Singapore would benefit U.S. businesses in Singapore, increase national security, and “break new ground” in the relationships with the other countries in Southeast Asia and for the Association of the South East Asian Nations (ASEAN) initiative. Bond urged Congress to decide in favor of this FTA.

IV. Administration Believes Singapore and Chile FTAs Set Stage for Further Integration in Southeast Asia and the Western Hemisphere

Deputy United States Trade Representative (USTR) Peter F. Allgeier testified on behalf of the Bush Administration. Allgeier described both FTAs as “the most comprehensive and up-to-date trade agreements the U.S. has concluded”, and thought that they set the stage for further trade integration in Southeast Asia and the Western Hemisphere.

Thomas and Baucus engaged Allgeier in a question-and-answer session, covering a wide range of issues:

Future Trade Negotiations

In response to a question from Thomas about what would be the next focus of the Administration for trade negotiations, Allgeier stated that for this year USTR wants to (i) complete the negotiations with Morocco and Central America, and (ii) continue the negotiations with the Southern African Customs Union (SACU) and Australia, (iii) the negotiation of the Free Trade Area of the Americas (FTAA), (iv) and the negotiations in the Doha Development Agenda (DDA).

Baucus asked regarding the Middle East Trade Initiative why the Administration does not push for a trade preference program in addition to the FTAs. Allgeier responded that USTR wants to work closely with Congress to provide such a program.

Rules of Origin

When Thomas asked why the rules of origin in both FTAs are groundbreaking, Allgeier responded that the rules of origin (i) are effective, (ii) they benefit both negotiating partners, (iii) and they are easier to operate than in former agreements. Allgeier added that there will a strong cooperation with Chile and Singapore to assure their enforcement.

IPR Provisions

Responding to a question by Thomas about the provisions in the FTAs on patented drugs, Allgeier said that in both agreements the IPR chapter is one of the most groundbreaking with good provisions on patented drugs and a strong enforcement.

Agricultural Provisions

Thomas asked if the Chile FTA will not enhance the transshipment of beef from Argentina into the U.S. through Chile and thus increase the competition for the U.S. beef producers. Allgeier responded that the Chilean SPS rules and the U.S. SPS rules offer two levels of protection against that.

ISI

Thomas and Baucus asked Allgeier to clarify the ISI provisions in the Singapore FTA. Allgeier pointed out that ISI is not a general rule, but only applies to a fixed list of products that the U.S. and Singapore already import duty free. Allgeier also made it clear that USTR has no intention to provide FTA benefits to countries that are not parties to the FTA with Singapore.

V. Industry and Agriculture Groups Support FTAs; Civil Society Groups Criticize Labor and Environmental Provisions

The Subcommittee also heard testimony from a variety of industry, agriculture, and civil society representatives. The industry and agriculture representatives supported the FTAs, while civil society groups like the Carnegie Endowment for International Peace criticized the labor and environmental provisions.

Coalition of Service Industries (CSI)

Norman Sorensen, President of Principal International, Inc., spoke on behalf of the Coalition of Service Industries (CSI). CSI is pleased with the services provisions in both FTAs and particularly with provisions on cross-border trade, investment, insurance, and movement of personnel.

When Thomas asked how the FTA will influence the trade in services in Chile, Sorensen responded that by eliminating the barriers the FTA will improve the flatness in the service balance.

Business Software Alliance (BSA)

James Jarrett, Vice President of the Worldwide Government Affaire for the Intel Corporation, testified on behalf of the Business Software Alliance (BSA). BSA thought that both FTAs significantly advance IPR protection, tariff-free and barrier-free e-commerce, and trade and tariff measures in information technology (IT) services.

U.S.-Singapore FTA Business Coalition

Jeffrey Shafer, Managing Director for Citigroup, testified on behalf of the U.S.-Singapore FTA Business Coalition ("Coalition"). The Coalition thinks both agreements incorporate groundbreaking commitments on financial services, telecommunications services, IPR protection, and e-commerce. The Coalition is actively working to support the passage of the Singapore FTA.

Carnegie Endowment for International Peace

Sandra Polaski, Senior Associate of the Carnegie Endowment for International Peace, said that the labor provisions of both agreements are appropriate for Chile and Singapore, but should not serve as a template. Polaski emphasized this for the FTA with Central America FTA (CAFTA), where there are serious flaws in the labor laws and in the enforcement. Polaski criticized the ISI provision in the Singapore FTA, as well as the decision in both FTAs to limit dispute settlement to the commitment to effectively enforce labor laws.

U.S. Chamber of Commerce

Larry Leibenow, President and CEO of Quaker Fabric Corporation, testified on behalf of the U.S. Chamber of Commerce ("Chamber of Commerce" or "Chamber'). The Chamber is particularly pleased with the tariff elimination; services commitments; IPR protection; and e-commerce, movement of personnel and labor and environment provisions of both FTAs. The Chamber believes that both agreements are worthy of Congressional support.

When Thomas asked how quickly the Chamber anticipated the influence of the FTA with Chile, Leibenow responded that already Chilean customers turned to the U.S. instead of to other trade partners of Chile.

The National Pork Producers Council

Jon Caspers, President of the National Pork Producers Council (NPPC), focused on the Chile FTA. The NPPC was particularly pleased with the tariff eliminations, as well as with the resolving of the sanitary issues that restricted U.S. pork exports to Chile. The NPPC urges Congress to approve both FTAs.

The Montana Grain Growers Association

Keith Schott, treasurer of the Montana Grain Growers Association (MGGA), focused on the Chile FTA. The MGGA is particularly pleased with the tariff eliminations and the customs provisions.

The Entertainment Industry Coalition

David Johnson, Executive Vice President and General Counsel of Warner Music Group, testified on behalf of the Entertainment Industry Coalition for Free Trade (EIC). The EIC named IPR protection in the digital age, IPR enforcement, and market access for goods and services as vital chapters of both agreements. The EIC is committed to the passage of the FTAs.

When asked by Thomas to describe the value of the IPR enforcement provisions in the FTAs, Johnson responded that they ensure physical enforcement as well as enforcement online.

The National Wildlife Federation

Paul Joffe, Senior Director Of International Affairs of the National Wildlife Federation, stated that both FTAs make modest progress in addressing environmental issues, but leave significant gaps. Joffe therefore urged the Committee to reject the use of the FTAs as a model for future agreements.

OUTLOOK

Reports indicate that the Bush Administration has sent draft implementing legislation for the U.S.-Singapore FTA to the House Ways and Means Committee and the Senate Finance Committee.

The Senate will likely hold so-called mock mark-ups to develop implementing legislation before it is put to a vote. At the hearing, Baucus called on Congress to ensure a "meaningful and transparent legislative process" and lauded Grassley for being "committed to an open process."

The House Ways and Means Committee will likely develop the implementing bills behind closed doors, although several Democrats, and particularly Trade Subcommittee Ranking Member Sander Levin (D-Michigan) have urged Ways and Means Committee Chairman Bill Thomas (R-California) to hold mock mark-ups.

Formal Congressional consideration of the FTAs will commence when the Administration sends final implementing legislation to Congress.

Administration Sends Final Implementing Legislation of Singapore and Chile FTAs to Congress; House Judiciary Committee Approves Final Implementing Legislation

SUMMARY

On July 10, 2003, the House Judiciary Committee, the House Ways and Means Committee, and the Senate Finance Committee held mock markups of the draft implementing legislation of the U.S.-Chile and U.S.-Singapore Free Trade Agreements (FTAs).

The House Judiciary Committee approved the draft implementing legislation of both FTAs, after amending the visa provisions. The House Ways and Means Committee and the Senate Finance Committee approved the draft implementing legislation of both FTAs without recommending any further changes.

The Administration transmitted the final implementing legislation of the FTAs on July 15, 2003. The House Judiciary Committee approved the final implementing legislation on July 16, 2003, the first official step toward Congressional approval of the FTAs.

Members have indicated that they hope Congress will approve the legislation before the August recess, which begins on July 25, 2003.

ANALYSIS

I. House Judiciary Committee Approves Final Implementing Legislation

On July 10, 2003, the House Judiciary Committee held a mock markup of the draft implementing legislation of the U.S.-Chile and U.S.-Singapore Free Trade Agreements (FTAs). The Committee approved the following amendments to Title IV of the draft implementing bills—conditions for the temporary entry of business personnel from Chile and Singapore into the United States:

- An amendment by Representative Peter King (R-New York), which makes the visa program of both FTAs a subsection of the existing H1B visa program. The USTR initially would have created a new visa category outside the scope of the H1B program for temporary workers from Singapore and Chile.

- An amendment by Ranking Member John Conyers (D-Michigan), which requires that any visa renewed for more than five years under the FTA visa programs count against the H1B visa total for each additional year in which it is renewed.

The USTR endorsed the King amendment but not the Conyers amendment. The Committee indicated that discussions with the USTR on the Conyers amendment are still ongoing. Because the process is a mock markup, the approved amendments are not binding. Instead, they are approved with the understanding that the USTR will incorporate them into the final text of the implementing legislation.

After approving the two amendments, the Committee approved the draft implementing legislation. However, the Committee warned USTR to refrain from attempting to change U.S. immigration law in a trade agreement, pointing out that immigration policy is strictly within the jurisdiction of Congress and the Judiciary Committee. The Senate Judiciary Committee raised similar concerns at a July 14 hearing.

On July 16, 2003, the House Judiciary Committee marked up the final implementing legislation and approved it. The House Judiciary Committee action is the first official step toward Congressional approval of the FTAs.

II. House Ways and Means and Senate Finance Committees Approve Draft Implementing Bills Without Recommending Further Changes

On July 10, 2003, the House Ways and Means Committee and the Senate Finance Committee also held mock markups of the draft implementing legislation of the U.S.-Singapore and U.S.-Chile FTAs. Prior to the mock markups and pursuant to concerns raised by various Committee members, USTR made the following changes to the draft implementing legislation:

- Singapore will allow pharmacies to sell certain types of therapeutic chewing gum without a prescription. Initially the FTA was more restrictive and only allowed the sale of certain types of therapeutic gum with a prescription.

- USTR changed the Integrated Sourcing Initiative (ISI) provision in the Singapore FTA, eliminating the original provision that would have allowed products on the ISI list to be added to other goods not on the list and counted as Singaporean inputs under local content rules of origin requirements. USTR also added the stipulation that the President cannot expand the ISI list without Congressional approval.

- USTR changed the President's proclamation authority under the FTAs to proclaim tariff cuts other than those needed to implement the agreements. The change would require the President to seek the advice of cleared private-sector advisors, the International Trade Commission (ITC), and the Committees of jurisdiction before proceeding.

The Committees were generally satisfied with the aforementioned changes and thus did not recommend further changes or amendments to the draft implementing legislation.

The House Ways and Means Committee approved the draft implementing legislation for the Chile FTA unanimously, and the Singapore FTA over the objection of Representative Pete Stark (D-California), who opposes any extension of the ISI list, even with Congressional approval. The Senate Finance Committee approved both draft implementing bills unanimously.

We highlight below the statements and testimonies made at the markups:

A. Members are Pleased with Changes Made by USTR, but Express Concerns About Labor Standards

House Ways and Means Committee Chairman William Thomas (R-California) praised both FTAs as "world-class agreements," and named the use of the negative list approach as a "milestone" and an important precedent for the future.

Trade Subcommittee Chairman Philip M. Crane (R-Illinois) was "especially pleased" with the change of the provision on chewing gum in the Singapore FTA. Due to opposition from Illinois-based gum maker Wrigley, Crane had urged the USTR to make the aforementioned change during a June 10, 2003, initial hearing of the House Ways and Means Trade Subcommittee (*Please see W&C June 2003 General Trade Report).*

House Ways and Means Committee Ranking Member Charles B. Rangel (D-New York) warned USTR that it is "critical" that the labor and environmental provisions of the Singapore and Chile FTAs *not* serve as a template for the U.S.-Central America FTA (CAFTA). Rangel pointed out that his support for the FTAs does not mean that he will also support the CAFTA.

Trade Subcommittee Ranking Member Sander M. Levin (D-Michigan) said that he was likely to support both FTAs as a result of the negotiated changes made by USTR. Levin was particularly pleased that USTR changed the ISI provision in the Singapore FTA. Levin indicated, however, that his support depends on USTR's acceptance of the amendments the House Judiciary Committee approved regarding temporary entry of professionals.

Levin also expressed serious concerns about using the environmental and labor provisions of the FTAs as a model for the CAFTA. Levin stated that a "vast majority of Democrats" would oppose a CAFTA with the same labor and environmental provisions as the Chile and Singapore FTAs.

B. Senators Support Draft Implementing Legislation of Both FTAs

Senate Finance Committee Chairman Charles Grassley (R-Iowa) praised USTR for collaborating with the Finance Committee throughout the negotiation and drafting process of both FTAs. Since the implementation of the FTAs will require changes to both federal and state laws in many areas, Grassley hopes that the implementing bills will only include provisions "necessary and appropriate" to implement the FTAs.

Senate Finance Committee Ranking Member Max Baucus (D-Montana) said that the FTAs "backed up good" against the objectives set forth in Trade Promotion Authority (TPA). Baucus is especially pleased with the tariff eliminations, highlighting the elimination of the 10% tariff on U.S. wheat exports to Chile. Baucus conceded that the FTAs are not perfect as models for future FTAs, and that there is always "room for improvement."

C. Zoellick Defends Labor and Environmental Provisions

USTR Robert Zoellick testified on behalf of the Administration at both markups. Zoellick said that both FTAs are comprehensive, transparent, and innovative, and contain strong chapters on trade in goods and services, intellectual property rights (IPR) protection, and labor and environmental standards.

Zoellick believes the negative-list approach with respect to trade in services is a specific benefit of the Singapore FTA. Zoellick named the government procurement provisions and the tariff reductions for agricultural products as specific benefits of the Chile FTA.

At the Senate Finance Committee markup, only Senate Finance Trade Subcommittee Chairman Craig Thomas (R-Wyoming) asked a question, but House Ways and Means Committee Members engaged Zoellick in an extensive question-and-answer session, covering a wide variety of subjects:

ISI

Representative Pete Stark (D-California) asked for a clarification of the ISI provision in the Singapore FTA. Zoellick pointed out that the provision is not a tariff advantage, but a way to reduce the merchandise processing fees and customs provisions for ISI goods. Zoellick stated that the USTR currently has no plans to extend the ISI list.

Transparency

Representative Benjamin Cardin (D-Maryland) asked Zoellick where he saw the increase in transparency in the FTAs. Zoellick said that the FTAs increase the transparency of the regulatory process in both Chile and Singapore. In addition, Zoellick stated that the Singapore FTA increases the transparency of enforcement procedures.

Representative Jim McDermott (D-Washington), a vocal critic of the Administration's international trade policy, questioned the secrecy of the USTR and complained that the classification of negotiating documents as items of "national security" had hampered industry and NGO efforts to follow and impact the negotiations. Zoellick insisted that the official Advisory Committees had all of the necessary information to make a thorough review of the FTAs and that 31 of the 32 Committees provided favorable reports of both FTAs.

IPR Provisions

Representatives Jerry Weller (R-Illinois) and Sam Johnson (R-Texas) asked Zoellick to name the specific benefits of the IPR chapters of both FTAs. Zoellick pointed out that the USTR was particularly pleased with the provisions on digital copyright protection, biotechnology copyright protection, and various technical provisions, as well as with the enforcement provisions.

FTAA

Weller asked how the Chile FTA would influence the negotiations of the Free Trade Area of the Americas (FTAA). Zoellick said that the Administration planned to use the Chile FTA as a basic structure for a number of chapters such as IP and government procurement.

FTA with Dominican Republic

Weller asked about the status of pursuing an FTA with the Dominican Republic. Zoellick responded that the USTR wants to encourage the Dominican Republic to move on towards free trade, but that USTR would need further consultation on this with the Advisory Committees.

Labor Provisions

Representative Xavier Becerra (D-California) asked if Zoellick believed that the labor provisions in both FTAs should serve as a model for the CAFTA. Zoellick responded that while it is USTR's intention to press forward with the CAFTA negotiations based on the Chile and Singapore labor standards, the USTR also worked with the negotiating partners to help them strengthen their labor laws. Zoellick said the US is also working with a number of international and regional organizations on initiatives to improve the labor situation in the CAFTA countries.

Sugar

Representative Earl Pomeroy (D-North Dakota) and Senator Thomas wanted Zoellick to clarify that the market access provision for sugar in the Chile FTA will permanently limit the country's exports of sugar and sugar-containing products to the US. Zoellick said that he would provide Pomeroy and Thomas with a clarification.

OUTLOOK

On July 15, 2003, the Administration submitted to Congress the final text of the implementing legislation for both the U.S.-Chile FTA (HR 2738, S 1416) and the U.S.-Singapore FTA (HR 2739, S 1417). The implementing legislation will be subject to an up-or-down vote. If Congress approves the formal implementing bills, the agreements will enter into force on January 1, 2004.

The House Ways and Means Committee and the Senate Finance Committee are scheduled to mark up the final implementing legislation on July 17, 2003.

Grassley indicated at the Senate Finance Committee mock markup that Congress could consider the final implementing legislation before the August recess, which is scheduled to begin July 25, 2003. Grassley said that the unanimous approval of the draft implementing legislation of both agreements by the Senate Finance Committee indicates a "general acceptance" of the accords.

In his statement at the House Ways and Means Committee mock markup, Crane said he expected both FTAs to pass with large bipartisan majorities and stated that he looked forward to "House passage by the August recess."

Middle East Trade Preference Program Could Serve as Precursor to MEFTA; Zoellick Outlines MEFTA Roadmap

SUMMARY

On June 20, 2003, the CATO Institute held a discussion on the proposed U.S.-Middle East Free Trade Area (MEFTA). Speakers considered MEFTA a critical element to promote peace in the region.

During a visit to the Middle East on June 18-23, 2003, United States Trade Representative (USTR) Robert Zoellick discussed the U.S.-Bahrain FTA, outlined the roadmap for MEFTA, and urged Egypt to take the necessary reforms to be a U.S. FTA candidate.

ANALYSIS

MEFTA Would Contribute to Peace in the Middle East; Trade Preference Program is Also Necessary

On June 20, 2003, the CATO Institute held a discussion on the U.S.-Middle East Free Trade Area (MEFTA) that President Bush proposed on May 9, 2003 (*Please see W&C June 2003 General Trade Report).* The discussion focused on whether trade liberalization is a way to promote peace in the Middle East.

The speakers included:

- Dan Griswold, **Associate** Director of the Center for Trade Policy Studies, CATO Institute;
- Manar Dabbas, First Secretary for Political and Congressional Affairs, Embassy of Jordan.

Griswold opined that comprehensive Free Trade Agreements (FTAs) would contribute to peace in the Middle East, but that it will take a long time to realize MEFTA. Griswold therefore supports the trade preference program of the Middle East Trade and Engagement Act of 2003, which was introduced in the House (HR.2267.IH) and the Senate (S.1121.IS) on May 22, 2003, by Representatives Adam Smith (D- Washington) and Calvin Dooley (D-California) and Senators Max Baucus (D-Montana) and John McCain (R-Arizona).

The House and the Senate versions both propose to provide the Middle East in the short term with the same trade preferences that the U.S. granted to sub-Saharan Africa, Central America and the Caribbean, and the Andean region. Both versions propose to apply this trade preference program to an area that is larger Administration's envisioned free trade area, and also include countries such as Pakistan and Bangladesh.

Dabbas referred to Jordan as an example of the positive influence of free trade on economic, political and social development. Dabbas said that the accession to the WTO and the FTA with the U.S. increased Jordan exports, employment, and economic growth rate. Dabbas emphasized that sound political decisions must accompany trade liberalization.

Zoellick Outlines Roadmap For MEFTA

On June 18-23, 2003, United States Trade Representative (USTR) Robert Zoellick traveled to the Middle East, where he visited Bahrain, Egypt, and Jordan.

On June 19, 2003, Zoellick had discussions with several trade officials in Bahrain about the launch of the negotiations on an FTA and about the reforms that Bahrain would have to undertake. Zoellick stated that the next step would be to conduct substantive consultations with Congress.

On June 23, 2003, Zoellick held a speech at the World Economic Forum (WEF) in Jordan in which he outlined the following steps that the U.S. would follow to realize MEFTA by 2013:

- Support active membership in the WTO;
- Expand the Generalized System of Preferences (GSP);
- Offer to negotiate Trade and Investment Framework Agreements (TIFAs);
- Offer to negotiate Bilateral Investment Treaties (BITs);
- Negotiate comprehensive FTAs;
- Provide technical and financial assistance.

Zoellick also commented on the possibility of a U.S.-Egypt FTA. Zoellick stated that Egypt still "has some work to do", especially in the area of customs, before an FTA with the U.S. could be possible.

OUTLOOK

An important question remains whether the Arab countries are ready and willing to participate in MEFTA. Griswold and Dabbas said that most Arab countries need to undertake more market reforms and liberalization initiatives. In addition, the countries generally are skeptical of the US initiative, and prefer to establish a regional free trade area first before having one with the US.

Griswold and Dabbas suggested that the Arab countries would support MEFTA if it was appropriately constructed and launched in a supportive environment.

EU and US Officials Discuss Trade and Non-trade Related Initiatives at High-level Bilateral Summit in Washington

SUMMARY

On June 24-25, 2003, top-ranking officials from the US and the EU met in Washington for a high-level bilateral summit. Among the EU delegation were President of the European Commission Romano Prodi, President-in-Office of the European Council and Greek Prime Minister Constantine Simitis, Vice President and Commissioner for Transport and Energy Loyola de Palacio, and Commissioners for Enterprise and Information Society and Trade Erkki Liikanen and Pascal Lamy. On the U.S. side, President Bush was accompanied by an "unprecedented number" of Senior Administration officials, including Vice President Dick Cheney, Secretary of State Colin Powell, National Security Adviser Condoleezza Rice, Attorney General John Ashcroft, Trade Representative Bob Zoellick, and many others.

Discussions focused on various matters of mutual interest, including:

- Launching negotiations on a Transatlantic Open Aviation Area Agreement ("OAA");
- Introducing changes to the Transatlantic Business Dialogue ("TABD");
- Forging initiatives on trade, regulatory cooperation and financial markets;
- Increasing cooperation on the "Hydrogen Economy"; and
- Concluding of Mutual Legal Assistance and Extradition Agreements ("MLAEs") and initiatives against proliferation of Weapons of Mass Destruction.

ANALYSIS

I. Open Aviation Area Agreement

The EU and the US agreed to embark on negotiations for the conclusion of a comprehensive Open Aviation Area Agreement ("OOA"). According to the joint statement following the summit, negotiations will begin some time in September this year and will build upon the existing bilateral aviation agreements that the US has with eleven EU Member States. The OOA will seek to further liberalize international aviation markets on the two continents and "…provide airlines, consumers, shippers, and national economies with the enormous benefits of a market-based approach to international civil aviation." The OOA will also "enhance economic opportunities, including expanded scope for enriching cooperative marketing arrangements, while ensuring implementation of the highest standards of international aviation safety and security."

Essentially, the OOA will create a free trade area for aviation and air services between the EU and the US. It will open up aviation markets, minimize government intervention, and boost competition and investments. Analysts consider the launch of these negotiations a major break-through, as they mark the first time ever that the EU and the US have directly discussed market liberalization and investment rules. Under the mandate given the Commission by the Council in June this year, the EU is ready to negotiate on a comprehensive set of issues, including among others market access to routes, capacity and frequencies, reducing and abolishing restrictions on ownership and control, setting of airfares, competition rules, aviation safety and security.

II. Meeting between Commerce Secretary Donald Evans and EU Commissioner Erkki Liikanen

On the eve of the summit, U.S. Commerce Secretary Donald Evans and EU Commissioner Erkki Liikanen met to discuss issues, including the Trans-Atlantic Business Dialogue ("TABD") process, bilateral trade, financial markets, security, and regulatory cooperation.

Changes to the TABD

The EU and the US agreed to introduce several changes to the TABD's framework to ensure that the TABD addresses more efficiently issues of mutual interest. Both sides agreed to:

- Reduce the TABD's scope of activities. The TABD will now focus on only two or three areas of crucial importance to bilateral relations. The TABD will propose an annual work plan outlining the specific areas of interest for the coming year and the goals the TABD expects to achieve.

- Increase governmental involvement in TABD activities. The U.S. Secretary of Commerce and the EU Commissioners for Enterprise and Trade will review the annual work plan proposed by the TABD and will give appropriate recommendations. High-level governmental officials on both sides will be continuously involved in the TABD process and will ensure the participation of the relevant state agencies, bodies or officials in the TABD activities.

- Replace the annual TABD conference will an annual meeting coinciding with the annual EU-US summit.

- Introduce expert-level working groups to discuss sector-specific issues. Business leaders and government officials will be welcome at these meetings. The decisions of the working groups will be used as expert opinions in discussions between businesses and the two governments.

Bilateral Cooperation on Trade, Regulatory Cooperation and Financial markets

Discussions in these areas focused on both multilateral and bilateral issues. With regard to the WTO negotiations, the EU and the US spoke highly of the efforts within the Doha Development Agenda ("DDA") and committed to work further towards full integration of developing countries into the multilateral trade system. The EU and the US reiterated their awareness of the importance of issues such as market access in agriculture, goods and services, for the overall success of the DDA. With regard to their bilateral relations, the US and the EU pointed out several recent positive developments:

- The EU and the US recently concluded negotiations on a Mutual Recognition Agreement on Marine Equipment. This agreement will allow the US to sell some special types of designated marine equipment[1] produced under U.S. standards on the EU market without further testing and approval by the EU. This agreement is considered "path-breaking" as it constitutes a major step towards increasing regulatory cooperation and enhancing the trade relations between the two partners.

- The parties announced they may soon reach a final resolution on the problem with U.S. poultry exports to the EU, and recalled the recent successful resolution of the Spanish Clementines (oranges) Exports issue.

- New Areas of Regulatory Cooperation; The US and EU announced they have recently launched new projects that seek to further develop regulatory cooperation. According to the joint statement, the new projects are in the area of cosmetics, food labeling and additives, metrology and auto safety regulations.

Other issues brought up for discussions were the Container Security Initiative ("CSI") and the dispute on Genetically Modified Organisms ("GMOs"). While the EU is now supporting U.S. efforts to increase port security under the CSI, the conflict on GMOs threatens to remain a serious obstacle in EU-U.S. trade relations.

Finally, the EU and US recognized the important role of the EU-US Dialogue on Financial Markets and committed to continue work and facilitate progress on issues of equal importance to financial markets on both sides of the Atlantic.

III. Hydrogen Economy

Another issue brought up for discussion during the summit was the "Hydrogen Economy". This is an initiative for replacing petroleum as a primary fuel-source for automobiles with hydrogen-powered fuel cells. The EU and the US agreed to speed up collaboration on the

[1] E.g. flares, GPS devices, life rafts, etc.

initiative and strengthen bilateral cooperation in research and development, in particular on developing universally compatible codes, standards and regulations. They stressed the importance of the hydrogen economy issue in addressing sustainable development problems and committed to enhancing cooperation between the governments and the private sectors on these issues.

IV. Signing of Mutual Legal Assistance and Extradition Agreements, including against Proliferation of Weapons for Mass Destruction

On June 25, the EU and the US signed MLAEs that will give law enforcement authorities on both sides of the Atlantic new tools and mechanisms to combat terrorism and serious crime. These agreements follow naturally on the recent increased EU-US cooperation in tracking down and investigating terrorists and terrorist groups, designating them for asset-freezing, and disrupting their overall criminal activities. This is the first time that the EU has signed agreements on legal cooperation in the fight against crimes with a third country.

On weapons for mass destruction, the EU and the US agreed to intensify efforts to limit the distribution of nuclear, biological and chemical weapons. They committed to strengthen export controls and develop effective new methods to "stop illicit trade in weapons of mass destruction."

OUTLOOK

The EU and the US discussed and agreed upon a number of issues in a wide range of areas. The two partners will now have to take specific measures to implement these decisions. The next bilateral summit is expected to take place around the same time next year.

US and Mexico Announce Partnership for Prosperity Initiatives

SUMMARY

A June US-Mexico meeting on the Partnership for Prosperity initiative focused on the best ways to improve economic development in Mexico and strengthen economic and other forms of bilateral cooperation.

The Partnership for Prosperity session resulted in various initiatives intended to:

- Reduce the costs of bilateral financial transactions;
- Improve competitiveness and infrastructure in Mexico;
- Increase bilateral ties and development of small companies; and,
- Strengthen education and training exchange between the countries.

ANALYSIS

On June 9-10 representatives of the private sector and government officials held a session in San Francisco on the Partnership for Prosperity initiative. Approximately 850 government officers, entrepreneurs and researches attended the meeting that resulted in several initiatives aiming to support economic growth in Mexico.

Presidents Vicente Fox and George W. Bush originally launched the Partnership for Prosperity initiative in September 2001, which aims to improve economic development in Mexico to reduce immigration to the US. The initiative is based on the premise that an integrated region will be more stable and prosperous. The Partnership will focus on the following: (i) expanding and broadening access to capital; (ii) sharing best practices and technical expertise; (iii) building capacity for future growth; and, (iv) linking institutions with shared goals.

The main initiatives that resulted from the San Francisco session include:

- **Improvement of Financial Operations:** Mexico and the US reached an agreement that will enable U.S. Overseas Private Investment Corporation (OPIC) to offer financial and insurance services to U.S. companies conducting business in Mexico. The agreement will enter into effect once the Mexican Senate ratifies it. Also, the U.S. Bank and the Mexican Savings Bank (BANSEFI) will provide a service for transferring funds from the US to rural communities in Mexico at low costs. Additionally, the U.S. Federal Reserve Bank and the Bank of Mexico will establish an automated clearinghouse, International Electronic Funds Transfer System (TEFI) for cross-border financial transactions. The TEFI would speed up the fund transfers between both countries and reduce the costs of financial transactions.

- **Economic Development:** The U.S. Council on Competitiveness created the Mexican Institute for Competitiveness aiming to cooperate in this matter and improve regional economic development. In addition, the U.S. Trade and Development Agency plans to grant $1.38 million in assistance for developing feasibility studies on infrastructure projects in Mexico.

- **Small Businesses:** The U.S. Small Business Administration, the Mexican Ministry of Economy, and the National Financing Agency (NAFIN) agreed to improve the commercial ties aiming to increase trade between U.S. and Mexican small businesses. Also, the US and Mexico will study the possibility of developing a Peace Corps program in Mexico. The main goal of the program would be for volunteers from the high-technology sector to work together with the Mexican National Council of Science and Technology (CONACYT) to develop small businesses and technology.

- **Education and Training:** The Arizona, Iowa State, Texas at El Paso, and Georgetown Universities signed agreements with CONACYT to grant scholarships for Mexican students and establish exchange programs for researches. Accordingly, Georgetown University and the U.S. Agency for International Development (USAID) agreed to provide training in Mexico aiming to develop business leaders in the agriculture and export sectors. Also, USAID plans to develop partnerships between U.S. and Mexican universities under the Training, Internships, Exchanges and Scholarships (TIES) initiative.

- **Private Sector Initiatives:** Recognizing the important role of corporate citizenship and responsibility in the communities in which companies operate, various companies announced plans for contributing to improve the economic development, health and education levels in Mexico.

OUTLOOK

The Partnership for Prosperity initiative is a clear example of the US and Mexico's aim to take NAFTA beyond trade and investment. Through this initiative, Mexico and the US expect to improve their strategic relationship and the prosperity of the NAFTA region.

The bilateral economic development initiatives could affect the FTAA negotiations, as Mexico may be more hesitant to oppose US FTAA proposals for fear of straining the bilateral relationship.

Taiwan Continues to Pursue U.S.-Taiwan FTA

SUMMARY

Taiwan continues to seek support from the United States to conclude a free trade agreement even though an evaluation report issued by the United States International Trade

Commission on October 21, 2002 concluded that such an agreement would not result in significant economic gains.

ANALYSIS

On February 5, 2002, the United States International Trade Commission (USITC) announced that it was conducting a study on the likely economic impact of a free trade agreement (FTA) between the United States and Taiwan. This study was initiated in response to a request[2] from the U.S. Senate Committee on Finance ("the Committee") on January 17, 2002.

The USITC issued an evaluation report on October 21, 2002, which concluded that an FTA with Taiwan would not produce a major positive impact on the U.S. economy. According to the evaluation report, an FTA between the US and Taiwan would result in a minimal 0.04 percent increase in the GDP of the US and a 4.59 percent increase in Taiwan's GDP. However, such a bilateral FTA would have a major impact on Taiwan's manufacturing, services, and agriculture industries, as well as on the U.S.'s textile industry. Overall, the U.S. export dollar amount would increase by 16 percent while its import dollar amount would increase by 18 percent – signaling a 2 percent likely trade surplus to Taiwan.

Taiwan believes that, in addition to the 4.59 percent GDP growth projected in the evaluation report, a U.S.-Taiwan FTA would also bring about favorable results for Taiwan in both trade and political environments, such as:

- Decrease in import price of raw materials;
- Further technology cooperation;
- Increase in exports;
- Liberalization of service industries; and
- Benefits to domestic consumers as a result of competition.

With these advantages in mind, Taiwan has continued to actively pursue a bilateral FTA with the US. Since October 2002, Taiwan has initiated several rounds of talks and lobbied various parties within the US. So far, the major concerns expressed by the U.S. trade representatives relate to:

- Agriculture,
- Intellectual property rights (IPR),
- Telecommunications, and

[2] Section 332(g) of the Tariff Act of 1930.

- Medicines.

Taiwan is looking to address these concerns. Among the four, agriculture is the toughest for Taiwan to tackle. This is because agriculture has been a major dominating industry in Taiwan for the last forty years. A fully liberalized agricultural market would affect the livelihoods of many farmers who are unable to handle foreign competition and who find it extremely difficult to make the transition to work in the manufacturing or services industries. As for IPR concerns, the Legislative Yuan has responded by revising its intellectual property rights-related laws including the Copyright Law and the Trademark Law.

OUTLOOK

With the signing of the U.S.-Singapore FTA (USSFTA) on May 6, 2003, Taiwan is encouraged to follow suit and expedite its signing of an FTA with the US. Recognizing the importance of such an agreement to the country's competitiveness, lawmakers from all political parties have united to approve every revision that may help in the pursuit of the U.S.-Taiwan FTA. However, liberalization in the abovementioned industries affects the interests of many parties in Taiwan, and the country will find that it has a long way to go before reaching a consensus that will meet the U.S.'s requirements.

Thailand and US Unlikely to Launch FTA Negotiations Before 2004

SUMMARY

At the meeting of the APEC Ministers Responsible for Trade in Khon Kaen on June 2-3, 2003, one of the top agendas in the bilateral session between the United States and Thailand was the possibility of launching bilateral free trade agreement (FTA) negotiations in 2004. Thailand, a long-time security and economic ally of the US, aspires to become the second country in Southeast Asia to conclude an FTA with the US. Despite the fact that both sides expressed interest in starting FTA negotiations in the near future, the US has specified clearly that Thailand needs to improve its regulations and enforcement measures in some areas, such as custom valuation, protection of intellectual property (IP), as well as to further liberalize its telecommunication industry *before* FTA negotiations can begin. Furthermore, the US indicated that investment and trade between the two countries must be further expanded under the TIFA framework before they can move on to a FTA.

Some analysts believe Thailand is ready to modify domestic regulations and pass new laws by the end of 2003 or early next year to meet the demands of the US. However, Thailand is afraid that the US might demand for more concessions under the Joint Council on Trade and Investment in return for beginning the FTA negotiations process.

Thailand, on the other hand, has the upcoming expiration of the U.S.-Thailand Treaty of Amity and Economic Cooperation in January 2005 to pressure the US into launching FTA negotiations more rapidly. Under this treaty, U.S. entities operating in Thailand receive special economic privileges in many areas such as investments and professional services. Analysts believe that Thailand is willing to transfer the benefits from the treaty into the FTA, provided FTA negotiations begin, if not completed, before 2005.

ANALYSIS

I. Background

After the U.S. Congress granted President Bush Trade Promotion Authority (TPA) under the Trade Act 2002, the U.S. government led by the U.S. Trade Representative (USTR) has vigorously pursued a policy of competitive liberalization, i.e. simultaneous bilateral, regional, and multilateral trade liberalization negotiations. For ASEAN, President Bush announced the Enterprise for ASEAN Initiative (EAI) in October 2002, which stated the U.S.'s intention to create a network of bilateral FTAs to increase trade and investment, and tie the U.S. and ASEAN economies closer together. Taking into account the specificities of ASEAN Member Countries, the US will proceed on negotiations at different paces, depending on the Member Country's economy, willingness, and promptness.

To date, the US has signed an FTA with Singapore and Trade and Investment Framework Agreements (TIFAs) with Thailand, Indonesia, the Philippines, and Brunei Darussalam.

Malaysia is also working very hard towards signing a TIFA with the US in the near future. The bilateral FTA between the US and Singapore demonstrates that an FTA with the US must be comprehensive – covering all trade issues between both parties. In fact, the U.S.-Singapore FTA will likely serve as a template for the U.S.'s FTAs with other ASEAN Member Countries. In order to reap the benefits of an FTA with the US and to influence future FTA negotiations between the US and other Asian countries, ASEAN Member Countries – including Thailand – aim to become the second country in Asia to secure an FTA with the US.

At a bilateral meeting between Thailand's Minister of Commerce Adisai Bodharamik and USTR Robert Zoellick held on the sidelines of the APEC Ministers Responsible for Trade Meeting in Khon Kaen on June 2-3, 2003, officials discussed the possibility of developing an FTA from the existing TIFA.[3] As a result of this meeting, USTR Zoellick is certain that the US can announce the U.S.-Thailand FTA negotiations in 2004, if Thailand satisfactorily improves its domestic regulations on custom valuation, IP protection, and liberalizes the telecommunication sector by that time.

II. Prime Minister Thaksin's Visit to the US

Following the meeting between Minister Adisai and USTR Zoellick in Khon Kaen, the Prime Minister of Thailand Thaksin Shinawatra also made a trip to Washington D.C. from June 9-11, 2003. Given Thailand's past ambiguous support on the war in Iraq, harsh comments on various occasions by the Prime Minister against U.S. interference in Thai domestic issues, and the ongoing war on drugs, the warm welcome expressed by President Bush is considered a diplomatic triumph for Thailand. During this visit, the two countries discussed several trade issues, including the expansion of trade and investment as called for in the TIFA and taking the necessary steps towards engaging in an FTA.

It is unlikely that President Bush will announce the U.S.-Thailand FTA when he visits Thailand this October since the first round of negotiations is targeted to start in 2004. Moreover, Thailand will find it especially difficult to fulfill the U.S.'s requests on the issues highlighted above within the next three months. Nevertheless, it is very possible that Thailand will become the second country in Southeast Asia next to Singapore to pursue an FTA with the US. We understand that Thailand and the US have obtained reassurance from each other that an FTA is a shared goal and both sides will work closely on issues of mutual concern.

Another positive development arising from Thaksin's trip is the finalization of discussions between the two countries on the Container Security Initiative (CSI). Thailand's Minister of Foreign Affairs Surakiart Sathirathai and U.S. Secretary of Homeland Security Tom Ridge plan to sign the Declaration of Principles in Washington in the near future.

[3] We believe that this is not the first time the FTA issue was raised between the two parties. The TIFA signed by Thailand and the US in October 2003 signified the former's intention towards securing an FTA with the latter.

III. Possible Negotiation Issues in the U.S.-Thailand FTA

Custom Valuation

The US would like Thailand to eradicate arbitrary custom valuation practices and increase transparency in the process. In particular, the US is focusing on custom valuation of information technology (IT) products and entertainment goods such as movie and music records.

Intellectual Property

Even though Thailand is not listed in the Priority Watch List in the U.S. Special 301 Report, copyright infringement on American IP products – especially movies and music – are prevalent. The US requests Thailand to make improvements in this area by passing new protection laws as well as seriously enforcing existing ones.

Liberalization of Telecommunication Sector

The US wants Thailand to further liberalize its telecommunication sector by allowing foreign companies to hold more equity in local companies. This issue is complicated by the fact that Thailand's Prime Minister was the owner of the largest telecommunication company in Thailand, Advanced Info Service (AIS), and is perceived to still have a close relationship with the company. Many see a delay in the liberalization of this sector as a protection of his business interests.

To satisfy the US, some analysts believe that Thailand is prepared to change its laws and more stringently enforce its regulations in the abovementioned areas. However, Thailand is afraid that the U.S. might keep demanding for more concessions under the TIFA, hence delaying the launch of FTA negotiations. Thailand is working on USTR to ensure that the US will not keep raising the bar on its demands.

Treaty of Amity and Economic Cooperation

The US and Thailand signed the U.S.-Thai Treaty of Amity and Economic Cooperation in 1966. This treaty accrues special privileges for American entities, which invest and undertake businesses in Thailand. When Thailand became a member of the World Trade Organization (WTO) in 1995, Thailand requested the WTO to maintain these privileges for the US for 10 years (until January 2005), as an exception to the Most Favored Nation (MFN) rule. Therefore, by January 2005, Thailand must terminate the special privileges given to American entities – either by extending them to all WTO members or withdrawing them completely from the US.

Analysts believe that Thailand, with concurrence from the US, will terminate the treaty and withdraw these special concessions from the MFN exemption clause. However, Thailand likely will include the concessions in the bilateral FTA provided the US begins FTA negotiations before the end of 2004 at the latest.

Some analysts observe that there are still disagreements between Thailand's Ministry of Foreign Affairs and Ministry of Commerce over this issue. The Ministry of Foreign Affairs wants to renew the treaty, while the Ministry of Commerce prefers to terminate it. However, analysts believe that the two ministries will reconcile their differences and pursue the solution presented above.

OUTLOOK

Even though the U.S. and Thailand are likely to begin FTA negotiations within the next one or two years, it is very difficult to predict how long it will take for both parties to complete the negotiations and implement the FTA. Concluding an FTA is usually a lengthy and arduous process. Furthermore, Thailand and the Bush Administration have to generate consistent support for the FTA from U.S. Congress and the American business community.

Moreover, the experience from the U.S.-Singapore FTA cannot really apply in this case. Singapore, unlike Thailand, is originally a very open economy with little sensitive sectors like agriculture and textiles. The US and Thailand, on the other hand, have many issues such as the liberalization of professional services (mainly banking), rules on government procurement, investment regulations, e-commerce, IP, and agriculture to negotiate and come to agreement on. Furthermore, market access of agricultural products to the US is very important to Thailand since Thailand has a large agricultural export sector.[4] Most analysts perceive agriculture to be the biggest obstacle to the speedy completion of negotiations.

It is very likely that apart from trade in goods, trade in services, and intellectual property rights, the Singapore issues [5] and e-commerce will also be included. The need for comprehensiveness will also make the U.S.-Thailand FTA negotiations more time consuming and difficult to conclude. Even though it is highly unlikely that the FTA negotiations can be announced by the time President Bush visits Thailand this October, negotiations should begin within a year or two. However, concluding an FTA is more difficult and is anticipated to take much longer than the U.S.-Singapore FTA.

[4] Agriculture provides employment for 40 percent of the country and accounts for about 15 percent of the country's GDP.

[5] Singapore issues cover trade and investment, trade and competition policy, transparency in government procurement, and trade facilitation.

US and Pakistan Sign TIFA

SUMMARY

On June 25, 2003, the United States and Pakistan signed a Trade and Investment Framework Agreement (TIFA). TIFAs are bilateral agreements establishing a mechanism for consultations on trade and investment policy, thereby aiming to encourage the liberalization of trade and investment.

ANALYSIS

On June 25, 2003, the United States and Pakistan signed a 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 opportunities.

TIFAs are bilateral agreements establishing a mechanism for consultations on trade and investment policy, thereby aiming to encourage the liberalization of trade and investment. They deal primarily with trade facilitation, tackling administrative and regulatory problems that can be an irritant to trade and investment.

The United States has signed TIFAs with many Asian countries, including among others, Brunei, Thailand, Philippines, and Indonesia.

OUTLOOK

In a joint press conference on June 24, 2003, President Bush said that the TIFA would create a formal structure to expand the economic relationship with Pakistan, while President Musharraf said that the TIFA would "help to move" towards an eventual Free Trade Agreement (FTA). Senior U.S. officials such as Department of Commerce Undersecretary for International Trade Grant Aldonas however indicated that the U.S. is not interested in going beyond a TIFA before Pakistan further liberalizes its economy.

TPSC Requests Comments on Duty Drawback and Deferral in FTA Negotiations

SUMMARY

On July 2, 2003, the Trade Policy Staff Committee (TPSC), an interagency body chaired by the Office of the United States Trade Representative (USTR) posted in the Federal Register (68 FR 39614) a request for comments on duty drawback and deferral in FTA negotiations with Central America, Australia, Morocco, the Southern African Customs Union and the countries participating in the Free Trade Area of the Americas (FTAA).

ANALYSIS

On July 2, 2003, the Trade Policy Staff Committee (TPSC), an interagency body chaired by the Office of the United States Trade Representative (USTR), published a notice in the Federal Register (68 FR 39614), requesting for comments on duty drawback and deferral in FTA negotiations with Central America, Australia, Morocco, the Southern African Customs Union and the countries participating in the Free Trade Area of the Americas (FTAA).

Duty drawback and deferral regimes rebate, defer, or reduce duties paid on material inputs contingent upon exportation of the processed or finished goods.

The Federal Register notes that restrictions on the use of these programs are a standard feature in FTAs because the programs can distort investment decisions and can create "export platforms" for materials produced in third countries.

OUTLOOK

Comments are due by July 30, 2003.

Customs

Customs Will Propose Advance Electronic Manifest Rules in Late June

SUMMARY

Douglas Browning, Deputy Customs Commissioner, recently addressed the Washington International Trade Association regarding "The New Paradigm: Customs and Homeland Security." Browning discussed Customs transition to the Department of Homeland Security as well as the range of programs Customs has developed in an attempt to balance trade facilitation and security concerns. Browning stated that Customs would release proposed rules for advance electronic manifest information for all types of cargo at the end of June.

ANALYSIS

Douglas Browning, Deputy Commissioner, Customs and Border Protection, Department of Homeland Security (formerly U.S. Customs Service), addressed the Washington International Trade Association on June 5, 2003, regarding "The New Paradigm: Customs and Homeland Security."

I. Transition to Department of Homeland Security

Browning stated that he has heard "nothing but good" about Customs transition to the Department of Homeland Security (DHS). Customs is working:

- To consolidate its new functions within the Department of Homeland Security, and Browning "confirm[ed] that trade is not taking a back seat to security."

- Toward an environment where there is "truly one face at the border." For the first time in U.S. history, all border agencies are under one Department. The Administration believes that these agencies can operate "seamlessly" with "huge" potential benefits for trade facilitation. Nonetheless, Browning conceded that Customs must tackle "deep cultural changes" to achieve one unified face at the border.

In response to a question regarding the delegation of revenue-collecting authority from the Department of Treasury to the Department of Homeland Security, Browning explained that House Ways and Means Committee Chairman Bill Thomas (R-California) crafted the legislation creating DHS so that Customs functions were not lost in the new Department. Therefore, the legislation gives Treasury some authority. In the same way, the legislation maintains the jurisdiction of the House Ways and Means Committee and the Senate Finance Committee. According to Browning, Congress and Customs agreed on this delegation of authority in order to keep the trade and enforcement functions of Customs in the same agency, whilst maintaining the connection to the same committees of jurisdiction as well as the Treasury Department.

II. Balancing Trade Facilitation and Security

Browning stated that Customs is working to ensure that security inspections and measures have not been intrusive. Browning believes Customs is conscious of the value of consultation and that they have made a "concerted effort" to engage the trade community in shaping new policy because ultimately Customs relies on stakeholders to implement the policy.

24-Hour Rule

Customs recognizes that questions exist about how trade facilitation and security are being balanced in the post-September 11 environment. With respect to the 24-hour rule for sea cargo, Browning stated, "None of the nightmares have come true; compliance has been high; and disruptions have been low."

Browning highlighted the example of Hong Kong. Hong Kong told Customs that its compliance would be about 45%, so Customs officials, including Browning, traveled to Hong Kong to engage officials there. Although the U.S. officials left Hong Kong with concerns about Hong Kong's prospective compliance, they made it clear that the United States would not delay implementation of the 24-hour rule. In the end, according to Browning, "The concerns did not materialize."

Container Security Initiative

Browning stated that Customs has not discerned a noticeable shift in container traffic from CSI to non-CSI ports. Browning went on to say that the European Union has "missed the point" in being concerned about a possible shift *(Please see W&C March 2003 General Trade Report).* Browning explained that, in the first stage, the US is targeting so-called megaports to join the Container Security Initiative (CSI). These ports serve as "points of consolidation" because the smaller ports do not have ships with the "sea legs" for transatlantic travel. Thus, according to Browning, it was "nonsense" when the EU said its smaller ports were being disadvantaged.

Browning characterized the CSI as "a real paradigm shift" because U.S. Customs officials are now stationed in foreign ports, and foreign Customs officials are in some U.S. ports. Browning believes that with the CSI and the 24-hour rule, one country's export data becomes the other country's import data and vice versa, which ultimately facilitates both trade and security.

Browning stated that Customs is now beginning a dialogue with South Africa regarding implementation of CSI there. In addition, Thailand recently signed on to the Container Security Initiative.

Customs-Trade Partnership Against Terrorism

Browning stated that C-TPAT has been "institutionalized" and that Customs is increasing the number and training of "Supply Security Specialists," who administer the program. In early

Fall 2003, Customs plans to launch "C-TPAT Plus" for foreign exporters, starting with the largest foreign exporters.

Advance Electronic Manifest Information

The Trade Act of 2002, which contains Trade Promotion Authority, requires Customs to develop regulations requiring advance electronic manifest information for all types of cargo by October 1, 2003. Browning stated that he is confident Customs will develop regulations that balance security and trade facilitation.

Customs circulated so-called strawman proposals for each type of cargo (air, rail, truck) in January 2003, but they met with significant opposition from the trade community. Referring to the strong opposition from the air cargo industry, Browning stated that the air cargo strawman proposal "went up in flames." However, the air cargo industry's proposal of one hour advance manifest information also "went up in flames," according to Browning. Browning explained that Customs is unable to target and monitor shipments if it receives manifest information only one hour in advance of lading. With respect to air cargo, Browning stated that Customs knows that the weight distribution load plans for airplanes are made well in advance of one hour, so the air cargo industry needs "a better reason" to support their proposal.

In the meantime, Customs is continuing to work with stakeholders, particularly through the Commercial Operations Advisory Committee (COAC), to develop regulations.

Bioterrorism Regulations

Browning stated that Customs and the Food and Drug Administration (FDA) are working "hand-in-glove" to develop and implement regulations for advance manifest of food imports, pursuant to the Bioterrorism Act *(Please see W&C June 2003 General Trade Report)*. Nonetheless, implementation will be "a mammoth undertaking."

OUTLOOK

Since the September 11 terrorist attacks, Customs has been tasked with stepping up security while maintaining the smooth flow of trade. Regulations for advance electronic manifest information have garnered the most scrutiny and concern from the international trade community. While Customs maintains that implementation of the so-called 24-hour rule for sea cargo has been relatively "painless," industry has had to shape its operations to comply with the regulations.

Analysts speculate that implementation of and compliance with advance manifest regulations for all types of cargo may not be as smooth. Adding the registration and advance manifest requirements for food imports could further complicate implementation efforts, as the statutory deadlines for the Trade Act of 2002 and Bioterrorism Act roughly coincide.

Customs Advisory Committee Discusses Organization Under DHS

SUMMARY

On June 20, 2003, the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service (COAC) held a meeting to discuss, among other things, the role of the Customs and Border Protection agency (CBP) under the Department of Homeland Security (DHS).

- The Treasury Department will cooperate with the DHS on the revenue collection operations of the CBP, while the DHS will solely control the non-revenue operations of the CBP. DHS is considering a regional structure for its organization, but no details have been decided.

- C-TPAT is not likely to disappear, but the reorganization could cause processing of cargo from C-TPAT members to take longer than anticipated. The next step is to expand the C-TPAT program outside the U.S.

Deputy Customs Commissioner Douglas Browning announced that the CBP plans to introduce uniform global standards for customs procedures at the next World Customs Organization (WCO) convention.

ANALYSIS

On June 20, 2003, the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service (COAC) held the third meeting of its eighth term, as announced in the Federal Register on May 29, 2003 (68 FR 32169).

The speakers included:

- Asa Hutchinson, Homeland Security Undersecretary for Border and Transportation Security, Department of Homeland Security (DHS);

- Timothy E. Skud, Deputy Assistant Secretary of the Treasury;

- Robert E. Perez, Customs and Border Protection (CBP) Director of the Customs-Trade Partnership Against Terrorism, Office of Field Operations;

- Brian C. Goebel, Senior Policy Advisor of the Office of the Commissioner;

- Douglas Browning, Deputy Customs Commissioner.

Customs and Border Protection Organization under DHS

Skud made it clear that the Treasury Department would maintain a strong role in customs issues. The Treasury Department will cooperate with the DHS on the revenue collection operations of the CBP, while the DHS will solely control the non-revenue operations of the CBP.

Hutchinson stated that the DHS is considering a regional structure for its organization, which caused concern among COAC members. Hutchinson stressed that the DHS wants to apply such a structure in a balanced way, whereby the decisions would still be made at the central level. No decision has been made on the regional structure. DHS will discuss this subject first with the COAC.

COAC Administration under DHS and Treasury

Hutchinson and Skud said that the COAC would report under the joint leadership of the Treasury Department and the DHS. When COAC members expressed concerns that they would have a diminished role under the DHS, Hutchinson promised that high-level representatives of the DHS would respond to their concerns at the next COAC meeting.

Customs-Trade Partnership Against Terrorism (C-TPAT)

Several COAC members feared that the C-TPAT program would disappear under the authority of the DHS, especially under a proposed regional structure. Hutchinson responded that C-TPAT was at the basis of the security functions of the DHS, although he did admit that processing of cargo from C-TPAT members might take longer than anticipated.

Perez stated that the next objective is to expand the C-TPAT program outside the U.S. Perez said that this is still at the draft stage, but hoped to have an idea of a basic structure soon. Perez said that it would be important to open up the program to as many different parties as possible and to ensure that changes can be made according to the parties that join.

COAC members stressed the importance of establishing trust with the foreign parties by providing them with benefits that are not just security-related.

COAC members indicated that the key concern for expanding C-TPAT would be how to screen the foreign parties.

The next seminar on C-TPAT will probably take place in the fall. Perez said that the exact date and place would be announced by July.

The 24-Hour Rule

Goebel said that the compliance with the 24-hour rule is very good. Goebel pointed out that the key issue involved in the implementation of the rule is efficient communication between all the parties involved in the process.

COAC members indicated that CBP is still looking for a system that uses the Unique Consignment Reference Number (UCR), to facilitate tracking, but has not yet taken any decision.

OUTLOOK

Browning said that the CBP plans to introduce uniform global standards for customs procedures at the next World Customs Organization (WCO) convention.

Browning hoped to have the standards implemented by the end of the year.

DHS Publishes Rules to Enhance Maritime Security

SUMMARY

On July 1, 2003, the Coast Guard and the Department of Homeland Security (DHS) published a series of six interim rules in the Federal Register to implement certain maritime security requirements of the Maritime Transportation Security Act (MTSA) of 2002. The regulations require portions of the maritime industry to complete security assessments, develop security plans, and implement security measures and procedures in ports and waterways.

The interim rules comprise:

- National maritime security (68 FR 39239);
- Area maritime security (68 FR 39284);
- Vessel security (68 FR 39292);
- Facility security (68 FR 39315);
- Outer continental shelf facility security (68 R 39338); and
- Automatic identification system and vessel carriage requirement (68 FR 39353).

ANALYSIS

On July 1, 2003, the Coast Guard and the Department of Homeland Security (DHS) published a series of six interim rules in the Federal Register to implement certain maritime security requirements of the Maritime Transportation Security Act (MTSA) of 2002.

The interim rules require portions of the maritime industry to complete security assessments, develop security plans, and implement security measures and procedures in ports and waterways. The rules focus on the sectors with a higher risk of involvement in a transportation security incident.

We highlight the interim rules below.

I. National Maritime Security

The rules on national maritime security (68 FR 39239) comprise 91 pages, and establish general provisions to implement the national maritime security initiatives set forth in the MTSA. The rules address:

- Industry-related maritime security requirements;
- The cost and benefit assessments of the entire suite of interim rules;

- The alignment of domestic maritime security requirements with the International Ship and Port Facility Security (ISPS) Code; and

- Recent amendments to the International Convention for the Safety of Life at Sea of 1974.

II. Area Maritime Security

The rules on area maritime security (68 FR 39284) comprise 18 pages. These regulations establish U.S. Coast Guard Captains of the Ports as Federal Maritime Security Coordinators with the authority to oversee and direct measures that are necessary to increase port security.

The rules also set forth measures to implement Area Maritime Security Plans and establish Area Maritime Security (AMS) Committees. The AMS Committees will conduct risk assessments in each of the U.S. ports, and develop Area Maritime Security Plans with security requirements for each port. The rules thereby also set forth measures to implement these Area Maritime Security Plans.

III. Vessel Security

The rules on vessel security (68 FR 39292) comprise 51 pages, and provide security measures for certain vessels calling on U.S. ports. The rules focus on various tank vessels, barges, large passenger vessels, and cargo vessels.

The rules require the owners or operators of vessels to:

- Designate security officers for vessels;

- Develop security plans based on security assessments;

- Implement security measures that are specific to the vessels' operation; and

- Comply with Maritime Security levels.

IV. Facility Security

The rule on facility security (68 FR 39315) comprises 41 pages, and provides security measures for certain facilities in U.S. ports. The rules focus on port facilities that handle dangerous cargo or service the higher risk vessels.

The rules require owners or operators of facilities to:

- Designate security officers for facilities;

- Develop security plans based on security assessments and surveys;

- Implement security measures that are specific to the facilities' operations; and

- Comply with Maritime Security levels.

V. Outer Continental Shelf Security

The rules on outer continental shelf (OCS) security (68 R 39338) comprise 36 pages, and provide security measures for OCS facilities. OCS facilities include certain fixed and floating facilities on the OCS other than deepwater ports, as well as mobile offshore drilling units (MODUs) that are not subjected to the International Convention for the Safety of Life at Sea of 1974 (SOLAS).

The rule requires the owners or operators of OCS facilities to:

- Designate security officers;
- Develop security plans based on security assessments;
- Implement security measures that are specific to the operation of the OCS facility; and
- Comply with Maritime Security Levels.

VI. Automatic Identification System and Vessel Carriage

The rules on the automatic identification system and vessel carriage (68 FR 39353) comprise 33 pages, and implement the carriage requirements for the Automatic Identification System (AIS) of the MTSA. The rule also implements the amended requirements of the International Maritime Organization that were adopted under SOLAS.

The rule requires the establishment of the AIS on all vessels that are subjected to SOLAS, on Vessel Traffic Service Users, and on certain other commercial vessels. The objective of the rule is to protect the security of the U.S. ports and waterways by:

- Facilitating vessel-to-vessel and vessel-to-shore communications;
- Enhancing good order and predictability on the waterways;
- Promoting safe navigation; and
- Contributing to maritime domain awareness.

OUTLOOK

The interim rules are effective from July 1, 2003, until November 25, 2003, when the DHS will issue final regulations. The DHS also announced that it would hold a public hearing on July 23, 2003, and requested comments, which are due by July 31, 2003.

Customs Publishes Notice of Intent to Distribute Byrd Amendment Funds for Fiscal Year 2003

SUMMARY

On July 14, 2003, the Bureau of Customs and Border Protection ("Customs") and the Department of Homeland Security (DHS) announced that Customs intends to distribute the assessed antidumping or countervailing duties, pursuant to the Continued Dumping and Subsidy Offset Act of 2000 ("Byrd Amendment"), for Fiscal Year 2003.

ANALYSIS

On July 14, 2003, the Bureau of Customs and Border Protection ("Customs") and the Department of Homeland Security (DHS) published a notice in the Federal Register (68 FR 41597), announcing that Customs intends to distribute the assessed antidumping or countervailing duties, pursuant to the Continued Dumping and Subsidy Offset Act of 2000 ("Byrd Amendment"), for Fiscal Year 2003.

The notice sets forth the list of antidumping duty orders or findings and countervailing duty orders, as well as the list of the affected domestic producers associated with each order or finding who are potentially eligible to receive a distribution.

The notice also provides instructions for affected domestic producers to file written certifications to claim a distribution in relation to the listed orders or findings.

OUTLOOK

Written certifications must be received by September 12, 2003.

GSP

President Extends GSP Benefits for Developing Countries; USTR Extends Deadline for Submission of Petitions for 2003 GSP Review and Initiates Review to Consider Algeria as a Beneficiary Country

SUMMARY

We want to alert you to the following GSP developments:

- On July 1, 2003, President Bush signed a proclamation expanding the Generalized System of Preferences ("GSP") program.
- On July 16, 2003, the Office of the United States Trade Representative (USTR) extended the deadline for the submission of petitions for the 2003 Annual GSP Product and Country Eligibility Practices Review.
- On July 16, 2003, the USTR announced the initiation of a review to consider the designation of Algeria as a beneficiary developing country under the GSP program.

ANALYSIS

I. President Extends GSP Benefits for Developing Countries

On July 1, 2003, the Office of the United States Trade Representative (USTR) announced in a press release that President Bush signed a proclamation expanding the Generalized System of Preferences ("GSP") program.

The USTR press release notes that the proclamation marks the conclusion of both the annual GSP program product review and a special review initiated to consider product requests from Argentina, the Philippines and Turkey.

Changes include:

- More than $96 million additional GSP benefits for Argentina, $30 million for the Philippines and $130 million for Turkey.
- Decisions on GSP product petitions from Bangladesh, Brazil, India, Morocco, Thailand and Uruguay.

The text of the Presidential Proclamation was published in the Federal register on July 2, 2003 (68 FR 39795).

II. USTR Extends Deadline for Submission of Petitions for 2003 GSP Review

On July 16, 2003, the Office of the United States Trade Representative (USTR) published a notice in the Federal Register (68 FR 42156), extending the deadline for the submission of petitions for the 2003 Annual GSP Product and Country Eligibility Practices Review to September 2, 2003.

III. USTR Initiates Review to Consider Algeria as a Beneficiary Country

On July 16, 2003, the USTR published a notice in the Federal Register (68 FR 42157), announcing the initiation of a review to consider the designation of Algeria as a beneficiary developing country under the GSP program, and requesting comments relating to the designation criteria. Comments are due on August 15, 2003.

OUTLOOK

The GSP program grants duty-free treatment to specific products that are imported from more than 140 designated developing countries and territories. The GSP was authorized by the Trade Act of 1974, and was renewed by the Trade Act of 2002.

MULTILATERAL/WTO DEVELOPMENTS

WTO Members at a Critical Stage in Preparations for the Cancún Ministerial; Draft Cancún Ministerial Text Released

SUMMARY

WTO Members are at a critical stage in preparations for the mid-term Ministerial Conference in Cancún, Mexico, September 10-14. The Doha Development Agenda ("Round") thus far has been widely perceived and reported as stalled; WTO Members have missed one negotiating deadline after another. Two dozen trade ministers meeting at the "mini-ministerial" in Sharm el-Sheik, Egypt from June 21-22 did not produce the desired impetus for negotiations. The United States, however, did indicate additional flexibility in its position on the TRIPS and Public Health issue. It remains to be seen if the upcoming mini-ministerial in Montreal from July 28-30 will conclude negotiations on the TRIPS and Public Health issue and lend additional momentum to the Round.

The current impasse on agriculture in particular threatens a successful outcome at Cancún and the December 2004 deadline for the Round as a whole. Nevertheless, the agreement reached on June 26 among European Union agriculture ministers on proposals for the reform of the Common Agricultural Policy ("CAP"), represents one of the first positive developments in the Round this year. A major theme in Geneva now is that success at Cancún, if not for the Round, depends on whether the EU's CAP reforms can be translated into additional negotiating flexibility on modalities for agriculture.

Meanwhile, WTO Members have begun preparations of the "Draft Cancún Ministerial Text" based on a text released on July 18 by General Council Chairman Carols Perez del Castillo in cooperation with WTO Director General Supachai Panitchpakdi. The draft text presents a basic outline of the state of negotiations in the run-up to Cancún, including modalities (negotiating approaches and targets) for agriculture and industrial goods, TRIPs and Public Health, developing country concerns, the launch of negotiations on the "Singapore Issues": investment, competition, trade facilitation and transparency in government procurement, and other issues. WTO negotiators intend to refine the text prior to presenting it to trade ministers to finalize at Cancún.

ANALYSIS

I. Sharm el-Sheik Mini-Ministerial and the Final Trade Negotiations Committee Before Cancún: Some Movement on TRIPs and Public Health; Little Impetus to Round as a Whole

WTO Members made little progress in their recent high-level meetings at the "mini-ministerial" in Sharm el-Shek, Egypt from June 21-22 and at the most recent Trade Negotiations Committee ("TNC") meeting in Geneva from July 14-15, the last scheduled meeting of the TNC before Cancún.

The two dozen trade ministers meeting in Sharm el-Sheik, did not provide much momentum to the Round. Ministers did not make progress on outstanding issues including agriculture as participants waited for the European Union to take a decision on reform of its Common Agricultural Policy (which took place a few days later). The mini-ministerial emphasized that agriculture is the key to negotiations; without progress in agriculture, other areas will not move forward. The US, however, did indicate additional flexibility in its negotiating position on the TRIPS and Public Health issue. The US said it would no longer insist on a predetermined list of diseases for which developing countries would be allowed to invoke compulsory licensing in order to import essential medicines.

WTO heads of delegations and other high-level officials met recently as the TNC for the last time before Cancún. The chairs of the five negotiating groups (*i.e.* agriculture, rules, services, environment and intellectual property rights) reported to the TNC that although progress on technical issues has been made, gaps remain in many of the Doha-mandated issues. WTO Director-General Supachai continued to warn negotiators on the lack of progress, stating that "overall we do not yet have a real negotiation." Dr. Supachai, however, noted that there have been encouraging signs on agriculture, industrial market access, and TRIPS and Public Health issues. He believes that the Doha Agenda will be "put in the right place quite soon" and emphasized that Members should not set up Cancún as neither a success or failure, but a stock-taking meeting for the Round's overall work program.

II. "Skeletal" Draft Cancún Ministerial Text Released

In a key development, General Council Chairman Castillo in cooperation with Dr. Supachai released on July 18 the first "Draft Cancún Ministerial Text" which provides a "skeletal" outline of the state of negotiations in the run-up to Cancún.[6] The text envisions adopting decisions on TRIPS and Public Health and geographical indications ("GIs") for wine and spirits, as well as modalities for agriculture and industrial market access, and possibly the four Singapore Issues. (The negotiated texts on these issues will be attached, and together will constitute the final declaration.) The text also intends to provide impetus to negotiations in services (including a target date for improved offers), environment, dispute settlement, special and differential treatment ("S&D"), implementation issues, e-commerce, technical cooperation, and accession, among other issues.

The text will be refined by Geneva negotiators and presented to ministers to finalize at Cancún. The "skeletal nature" of the text is considered a wise approach, especially after the lesson of the 1999 Seattle Ministerial where ministers were presented with a heavily-bracketed draft text indicating substantial areas of disagreement. WTO heads of delegations will meet again as the General Council from July 24-25 in Geneva, and will focus their discussion on the draft text.

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[6] JOB(03)/150, Preparations for the Fifth Session of the Ministerial Conference: Draft Cancún Ministerial Text, 18 July 2003.

III. Agriculture: EU Announces CAP Reforms; Negotiations on Modalities Still at an Impasse

On June 26, the European Union announced reforms to its Common Agricultural Policy ("CAP"), but the extent of the reforms and their actual implementation remain unclear. As a preliminary matter, the Cairns Group and other WTO Members have reacted with cautious optimism, but question whether the reforms would allow EU negotiators enough flexibility to agree on meaningful agriculture modalities at Cancún.

In terms of the "three pillars" of the agriculture negotiations the CAP reforms go farthest on domestic support, by beginning the decoupling of subsidies from production (although it is not clear if they go far enough on this issue to satisfy the *demandeurs* on agriculture). The reforms would have some indirect effects on export subsidies, but none on market access, which is the top priority of the US in these negotiations. The United States, however, will probably come under greater pressure to reform its own trade-distorting domestic support programs.[7] The EU is also pressuring the US to reform its export credits and other support programs.

The EU has highlighted a fourth "pillar" in its discourse on agriculture – the so-called "non-trade concerns." The non-trade concerns include geographical indications ("GIs"), eco-labeling, the precautionary principle, among others, with GIs as the most important of these issues. For example, the EU is seeking strengthened protection under Article 23 of the TRIPS Agreement for GIs for products other than wines and spirits.[8] The EU proposals in this regard are vigorously opposed by a number of countries that would be denied the right to use trademarks which they insist have become generic (as provided by the grandfather clause in Article 24 of TRIPs Agreement).[9] The EU is seeking concessions on non-trade concerns in return for the concessions it will have to make in the other three pillars of agriculture reforms.

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[7] U.S. commodity groups, for example, are divided in their views on decoupling farm payments (mostly "amber box" subsidies) from domestic production. Cotton, sugar and dairy producers would stand to lose from a reduction in U.S. domestic support. On the other hand, fruit and vegetable producers, and beef and pork producers do not receive much in farm payments and stand to benefit from reduction of domestic support globally.

[8] Paragraph 18 of the Doha Declaration provides a mandated to conclude TRIPS Article 23.4 negotiations on the establishment of notification and registration procedures for wine and spirits by the Fifth Ministerial Conference (in Cancún). Ministers referred the question on the extension of GIs to other products to the TRIPS Council, and did not explicitly agreed to negotiate the extension of GIs to other products.

[9] The US is considering a WTO dispute against the EU over European Council Regulation 2081/92 regarding the protection of GIs for agricultural products and foodstuffs. In a latter dated July 11, 2003, U.S. Senators Grassley and Baucus urged USTR to reject EU demands on protection for GIs in exchange for EU support for agricultural negotiations at the WTO. They also supported expediting the WTO dispute against the EU on its GI registration system.

Most other countries are objecting to any talk of a fourth pillar, arguing that non-trade concerns do not have the same priority in the Doha Mandate.

Another fear that has been expressed is that the EU intends to maintain uncertainty regarding its negotiating position until Cancún, where it can then grant concessions in return for demands from other countries. While this approach is consistent with the EU's position that it is now for others to make concessions, to delay serious negotiation on agriculture until Cancún could make it very difficult to reach agreement on other issues in the short time available there. Many WTO Members are waiting for the EU to indicate its willingness to offer meaningful agricultural concessions before they clarify their negotiating positions. The EU has indicated, however, that it does not intend to put forward a new proposal on agriculture prior to Cancún. EU Agriculture Commissioner Franz Fischler will be under pressure to clarify the EU position in his upcoming meetings in Washington DC this month, prior to attending the next mini-Ministerial in Montreal from July 28-30.

In other developments, the Chairman of the Negotiating Group on Agriculture Stuart Harbinson released a report to the TNC dated July 7, which provides an update on the status of negotiations in the "three pillars" and details the formidable list of issues that must be addressed in the pre-Cancún period.[10] Harbinson's report will serve as a guide for negotiations in the coming weeks. Harbinson cites, for example, the need to bridge differences between Members on tariff reduction formulas (*e.g.*, Uruguay Round approach vs. the more ambitious "Swiss formula"), increasing support for developing countries designating "special products" (subject to more flexible reduction), and developing criteria for the special safeguard mechanism. Harbinson also cites progress in development of disciplines on export credits and food aid programs. He also mentions briefly that the "peace clause" (Article 13 of the Agriculture Agreement) – the moratorium on disputes against certain subsidies is set to expire at the end of 2003. The Special Session of the Agriculture Committee will meet again from July 16-18, in an effort to bridge differences prior to Cancún.

In sum, although the prospects for agriculture reform remains uncertain, the mood is not as pessimistic as it was a few weeks ago. Nobody is dismissing the European CAP reforms as inadequate for a deal at Cancún. There is still no doubt that agriculture is the key to the negotiations, and that Cancún will be a failure if there is no agreement on agriculture.

IV. TRIPS and Public Health: A Solution Within Reach; GI Debate Still Deadlocked

There is guarded optimism that a deal can be done on TRIPS and Public Health prior to Cancún. USTR Robert Zoellick's announcement in Sharm el-Sheik that the US would no longer insist on a list of specified diseases for which countries would be allowed to import generic drugs under emergency circumstances (by issuing compulsory licenses) was considered a major

[10] *See* TN/AG/10, Negotiations on Agriculture: Report by the Chairman, Mr. Stuart Harbinson, to the TNC, 7 July 2003.

breakthrough.[11] USTR Zoellick said he would resume discussions with the pharmaceutical industry, and was hopeful of obtaining a deal soon. A deal is likely to be based to some extent on the December 2002 paper by former Council Chairman Eduardo Pérez Motta. No deal has been reached as of yet, however, so the initial optimism in Sharm el-Sheik has been tempered to some extent.

It should be noted that all parties agree that TRIPS and Public Health is an important symbolic issue. Delegations are not pushing for linkages to the general package of trade issues that will be dealt with at Cancún (the TRIPS and Public Health Declaration was a stand-alone agreement and not part of the Doha Declaration). If a deal on TRIPS and Public Health is reached before Cancún, it would add momentum into the negotiations. If no deal is reached, then the issue could poison the atmosphere at Cancún, especially between developed and developing countries.

In other developments, there is no agreement as yet on the development of a multilateral register of geographical indications for wines and spirits, for which the EU is the primary *demandeur* (the deadline is by Cancún). At the meeting of the TRIPS Council from July 2-3, Members could not agree on two key issues: (i) "legal effect" – legal requirements to protect GIs; and (ii) "participation" – obligation by countries to protect registered GIs regardless of a country's registration of the terms. TRIPS Council Chairman Ambassador Eui-yong Chung reported to the TNC that delegations' "positions continue to be quite divided" on both issues, but would continue his discussions and possibly convene another special session of the TRIPS Council prior to Cancún.[12]

V. Services: Reasonable Progress Thus Far; But Offers Not Ambitious

WTO Members have made reasonable progress in services negotiations thus far with thirty Members having tabled offers to liberalize their markets since the initial deadline of March 2003. Developing countries account for 15 of these offers; and the EC as a whole counts as one. The initial deadline was March 31, 2003, but offers are still coming in: eight more are expected before Cancún and many others await developments in agriculture. Most of the current offers, however, are not very ambitious. The Chairman of the GATS Council, Ambassador Alejandro Jara of Chile reported to the TNC on July 11 that "the quality of some offers leave much to be desired in respect of coverage of sectors and modes of supply as well as the depth of

[11] The U.S. pharmaceutical industry (and particular companies like Pfizer), have moderated their position on requiring a predetermined list of diseases as part of a deal. The industry still insists on appropriate safeguards to ensure that the export of the generic drugs are intended for poor countries that have no, or insufficient manufacturing capacity.

[12] *See* TN/IP/7, Seventh Special Session for the Council on TRIPS: Report by the Chairman, Ambassador Eui-yong Chung, to the Trade Negotiations Committee, 4 July 2003.

commitments."[13] He also suggested that ministers in Cancún should provide guidance on the offers, including "landmark dates by which Members would improve their initial offers."[14] Reportedly, the US urged setting an ambitious schedule for improving offers, including a two-stage timeframe next year in order to finalize negotiations by the end of 2004. Developing countries, however, reacted with much skepticism to an ambitious timeframe as many have yet to table their first offers.

Nevertheless, it is likely that more substantial offers in services will come once the EU's negotiation position in agriculture is clarified. Some countries such as Brazil and several Southeast Asian countries are reportedly delaying their submission of offers until they see what is on the table in agriculture. Developing countries are also particularly interested in liberalization for movement of temporary professionals under GATS Mode 4 (presence of natural persons). It is likely that there will be significant commitments in this area from the EU, but developing countries have expressed disappointment on the lack of movement from other countries including the US. (The US has come under political pressure not to liberalize on Mode 4 issues after it made some concessions in this area to bilateral FTA partners Chile and Singapore).

The most recent round of services negotiations held July 4-10 was again largely devoted to bilateral meetings to review existing offers and encourage the tabling of new and improved offers. Some committees such as the Working Party on GATS Rules also met, but reported little progress in the long-running and often divisive negotiations on emergency safeguards, subsidies, government procurement and domestic regulations. The current deadline for the establishment of an emergency safeguard mechanism is March 15, 2004, but the issue remains deadlocked. Several developing countries have said that they will raise their concern about this issue at Cancún. The Chairman's report to the TNC suggested that Members hold a meeting of the Special Session of the Services Council to review progress on these four issues by March 31, 2004.

VI. Industrial Market Access: Little Movement Expected Until Cancún

Discussions on non-agricultural, industrial market access have been productive, but wide divergences remain over the proposed modalities tabled by Chairman of the Negotiating Group on Market Access, Ambassador Pierre Louis Girard of Switzerland on May 16. For example, the US and New Zealand on the one hand want complete tariff elimination by 2015; developing countries on the other, insist on greater flexibility in line with the "less than full reciprocity" language of the Doha Declaration, and many of them are concerned to preserve existing margins of preference. Ambassador Girard's proposal provides developing countries with considerable flexibility in tariff reduction, but has provoked criticism from a wide range of Members

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[13] TN/S/10. Special Session of the Council for Trade in Services: Report by the Chairman to the Trade Negotiations Committee, 11 July 2003, at para. 16.

[14] *Id*.

including Japan, the African Group, and surprisingly, India. Japan is resistant to the sectoral approach for certain sectors including fish products. India and other developing countries seek a voluntary approach to sectoral liberalization, and more flexibility in the formula approach for overall tariff reductions.

At the Negotiating Group meeting held July 9-11, Ambassador Girard indicated that he might circulate a revised draft on modalities after the next meeting scheduled for August 13-15, if there is productive feedback from Members on alternative approaches. Participants also reviewed proposals including from island states Fiji, Mauritius and Paupua New Guinea – which emphasized the special needs of vulnerable small economies, and their desire to preserve preferential margins such as granted by developed countries' Generalized System of Preferences ("GSP") programs.[15] The US also submitted a proposal on non-tariff barriers ("NTBs") that suggested a "vertical modality" approach to eliminating NTBs within a particular industry such as automobiles or textiles and apparel.[16] The Negotiating Group thus far has placed less attention on NTBs than on tariff reduction.

Reportedly, the US and EU will make a strong push for progress on industrial market access at the mini-ministerial in Montreal later this month. Both favor ambitious negotiating modalities, including on the formula approach and as applied to developing countries. US and EU officials in the recent Negotiating Group meeting have asserted that Chairman Girard's proposal is lacking in ambition, especially as regards developing countries with high average tariffs; the proposed tariff formula would require proportionately less reduction from such countries.

VII. Rules Negotiations: Technical Work Proceeds Without Target Dates

WTO Members have made some progress on technical issues in the Negotiating Group on Rules on disciplines for antidumping, subsidies, fishery subsidies and regional trade agreements. In a report to the TNC, Negotiating Group on Rules Chairman Ambassador Tim Groser of New Zealand cited that 129 proposals have been made on these issues with most of these focused on antidumping issues.[17] For some important Members like Japan and advanced developing countries, antidumping reform is a major priority.[18] Some Members believe reform

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[15] *See* TN/MA/W/21/Add.1, TN/MA/W/38 and TN/MA/W/39.

[16] *See* TN/MA/W/18/Add.3, United States: Vertical NTB Modality, 16 June 2003.

[17] See TN/RL/6, Negotiating Group on Rules: Report by the Chairman to the Trade Negotiations Committee, 2 July 2003.

[18] Ambassador Groser has cited that antidumping has drawn the most participants (30 countries) with discussion on a wide range of issues including dumping margin calculations, non-market economy treatment, injury and causality determinations, standards for initiation of investigations, facts available, sampling, price undertakings, lesser duty, all others rates, sunset reviews, public notice and transparency, treatment of confidential information, judicial review, special and

should take place on an incremental level – which could be more acceptable to the US (which takes the more defensive position of preserving existing disciplines) as it increasingly becomes a target of anti-dumping actions.

In other negotiations on subsidies and regional trade agreements ("RTAs"), work has been productive but proceeding at a slower pace. Ambassador Groser reported increasing participation in discussions on subsidy disciplines as applied to industrial production, however; major differences remain on fishery subsidies. RTA discussions have centered on two themes: (i) procedural (*e.g*. transparency, notification); and (ii) systemic (*e.g*. better definition of "substantially all trade"), but progress has been slow. The Negotiating Group has no specific deadlines to meet at Cancún (nor will Cancún take any decisions on rules-related issues), and will meet again to review progress from July 21-23.

VIII. Investment and Singapore Issues: Uncertainty Remains on Launch of Negotiations at Cancún

There has been much debate as to whether investment and competition should be dealt with separately from the other, less controversial Singapore Issues (*i.e*., trade facilitation and transparency in government procurement). The EU and Japan want them dealt with in a package or "single undertaking" so as to increase the likelihood of successfully negotiating investment and competition agreements. The weakness of this tactic is that the developing countries that oppose investment and competition would have no enthusiasm for trade facilitation or procurement either; there is no trade-off as far as they are concerned.

On July 8, twelve developing countries circulated a paper in response to an EU proposal on modalities which advocated the launch of negotiations on the Singapore Issues. The developing countries warned that the consensus on launching negotiations on all Singapore Issues does not exist, and that the "assumption in the EC paper that negotiation on the Singapore issues will commence after Cancún is not correct."[19] The countries also criticized the EU for focusing too much on procedural matters and asserted that more substantive discussion on modalities for each of the issues (rather than one set of modalities for all four issues), was necessary prior to the launch of negotiations. Most other countries, including the US, would like to see the Singapore Issues de-linked so as to increase the chances of reaching agreements in trade facilitation and transparency in government procurement.

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differential treatment, public interest, concurrent application of AD and safeguard measures, technical assistance, a swift control mechanism for initiations, circumvention, duty refunds, duty absorption and trade- and market-distorting practices. TN/RL/6 at para. 10.

[19] WT/GC/W/501, Comments on the EC Communication (WT/GC/W/491) on the Modalities for the Singapore Issues, Communication from Bangladesh, Cuba, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, Pakistan, Venezuela, Zambia and Zimbabwe, 8 July 2003, at para. 3.

Regarding investment negotiations, it is still unclear what will happen with this issue and its effect on the other Singapore Issues. The wildcard is India, which has been vocal in opposition to any investment agreement at the WTO. It is not clear whether India really would not sign on to an agreement under any circumstances, or whether this is merely a negotiating stance. Most countries with the exception of Cuba and possibly Malaysia have expressed at least a willingness to begin negotiations.

There are a number of uncertainties regarding the scope of a proposed investment agreement, the most important being whether it would cover only foreign direct investment or portfolio investment as well. The immediate question is over the content of the modalities to be agreed at Cancún – whether they should cover substantive issues such as this or merely procedural matters, as the EU would prefer. The US favors a broad, ambitious agreement, and fears a weaker agreement would undermine existing disciplines in bilateral investment agreements. Because the likelihood of an ambitious agreement is slim given India's position, the US has not been a *demandeur* on investment negotiations. In any case, it is widely believed that it will be difficult to conclude an investment agreement by the Round's current deadline of the end of 2004.

OUTLOOK

There exists considerable risk that Cancún will turn out to be a failed meeting, more akin to the 1999 Seattle Ministerial than the 2001 Doha Ministerial due to the significant number of outstanding issues. Cancún will be a failure if the European agricultural reforms prove insufficient to satisfy the *demandeurs* and as a result, negotiations on other issues will stall. The more optimistic scenario is that the EU will derive enough flexibility from the recent CAP reforms to be able to join in an agreement on agriculture modalities which will unblock other issues and allow the Cancún meeting to fulfill its purpose of adding momentum to the Round. A failure to conclude an agreement in Cancún will provoke more WTO disputes, especially after the expiration of the Agriculture Agreement's "peace clause" at the end of 2003.[20]

The other major question is the January 1, 2005 deadline for the Round as a whole, and whether it should be extended at Cancún. Until Sharm el-Sheik, the EU insisted that it should be adhered to, but at the meeting, EC Trade Commissioner Pascal Lamy for the first time addressed the possibility that it might not be feasible. However in public all delegations (and the WTO Secretariat) are maintaining that the deadline must be respected. However, privately they are divided, with many (but not all) believing that the Doha agenda is too ambitious to conclude on time, especially if negotiations on all four Singapore Issues are launched and linked to the

[20] Article 13 of the Agriculture Agreement, otherwise known as the "peace clause" is a moratorium on WTO disputes against agricultural export subsidies and domestic support programs which exceed levels agreed to during the Uruguay Round. The peace clause will expire on December 31, 2003, and was intended as a deadline for Members to negotiate new liberalization commitments in the sector.

deadline as a single undertaking. Nevertheless it is unlikely that a decision to extend the deadline will be taken at Cancún.

Later this month, Canada plans to host the next, and last high-level gathering of 25 trade ministers prior to Cancún, at a mini-ministerial in Montreal from July 28-30. Ministers intend to refine the text further in order to reach a decision on outstanding issues including agriculture, industrial market access, TRIPS and Public Health, and other issues. If ministers can reach a decision on TRIPS and Public Health in Montreal, this would be a major accomplishment in itself.

Meanwhile in Geneva, the release of the Draft Cancún Ministerial Text on July 18 has launched active preparations for setting the agenda at Cancún. General Council Chairman Castillo and Dr. Supachai will coordinate efforts to refine the text at the next General Council meeting in Geneva from July 24-25, and in the pre-Cancún period. This text is merely a skeleton draft, little more than a list of the issues on which agreement must be reached at or before Cancún. A second and final draft will be circulated in late August. WTO negotiators and the WTO Secretariat have agreed to shorten their absence during the vacation month of August (to 10 days rather than the entire month) to devote more time to preparations for Cancún. With time running out, WTO Members will need to expedite their efforts to define their negotiating positions leading up to Cancún. Needless to say, ministers in Cancún have a challenging, but not impossible task ahead.

GAO Releases Database of China's WTO Accession Agreement

SUMMARY

In a June 13, 2003, letter to Senate Finance Committee Chairman Charles Grassley (R-Iowa), Ranking Member Max Baucus (D-Montana), House Ways and Means Committee Chairman Bill Thomas (R-California), and Ranking Member Charles Rangel (D-New York), the General Accounting Office (GAO) announced the public release of an electronic database of the major components of China's World Trade Organization (WTO) Accession Agreement.

ANALYSIS

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The GAO created the database in order to conduct a report entitled "World Trade Organization: Analysis of China's Commitments to Other Members" (GAO-0304), which the GAO released in October 2002. The database gives access to (i) the major commitments in China's WTO Accession Agreement, including services commitments as well as (ii) the key results of the GAO report.

China's Accession Agreement sets forth the commitments or legally binding pledges to other members that allowed China to accede to the WTO. The Agreement also describes how China will adhere to the underlying agreements, principles, rules, and specific procedures of the WTO.

OUTLOOK

The database can be accessed at www.gao.gov.

Domestic Agriculture Industry Opposes Negotiation of Domestic Support in Regional and Bilateral FTAs; Urges Revision of Harbinson WTO Proposal

SUMMARY

On June 18, 2003, the House Committee on Agriculture held a hearing to review the multilateral and bilateral agricultural trade negotiations. Representatives from various agricultural sectors in the US, such as horticulture, grain, fruits and vegetable and other processing industries testified.

Many industries sharply opposed Harbinson's proposal on agricultural negotiating modalities and argued that the US should not negotiate domestic support in the regional or bilateral FTA negotiations.

Industry representatives emphasized that bringing trade partners into compliance with the terms of trade agreements is equally important, if not more important, than reaching an agreement. Some of the agricultural industries are unsatisfied with lack of rules enforcement in foreign countries such as China, Mexico and Russia. They asked USTR to work harder to ensure that US trading partners comply with their obligations.

Generally, industry representatives testified that they are competitive and efficient, but subsidies and other trade distorting measures in other countries make them less competitive. As soon as they can compete on the same level of playing field, they argue, they expect to increase exports and global market share.

ANALYSIS

On June 18, 2003, the House Committee on Agriculture held a hearing to review past and future multilateral and bilateral agricultural trade negotiations. Representatives agree that expansion of international trade in the bilateral, regional and multilateral level will expand their market share in other countries. Nevertheless, representatives raised numerous concerns.

The following witnesses testified:

- Hobey Bauhan, President, Virginia Poultry Federation
- Bob Stallman, President, American Farm Bureau Federation
- Ernest S. Reeves, Regional Vice President for Policy, National Cattlemen's Beef Association
- Jon Casper, President, National Pork Producers Council
- Dennis McDonald, International Markets Committee Chairman
- James P. "Tom" Camerlo, Chairman, National Milk Producers Federation

- Alan J. Lee, Vice Chairman, Wheat Export Trade Education Committee
- Robert W. Greene, Chairman, National Cotton Council
- Ron Heck, First Vice Chairman, American Soybean Association
- Doug Boisen, Chairman of the Trade Task Force, National Corn Growers Association
- Joe Zanger, Board of Directors, California Farm Bureau Federation
- Andrew W. LaVigne, Executive Vice President/CEO, Florida Citrus Mutual
- Jack Roney, Director of Economics and Policy Analysis, American Sugar Alliance
- Sarah F. Thorn, Director of International Trade, Grocery Manufacturers of America.

I. Doha Agriculture Negotiations

On February 12, 2003, Stuart Harbinson, Chairman of the WTO Negotiating Group on Agriculture, presented a first draft on the Doha agricultural negotiating modalities to the Committee on Agriculture. *(Please see W&C March 2003 General Trade Report).* The negotiating modalities serve as a basis for the agricultural negotiations in the Doha round.

Problems in the Harbinson's proposal, according to witnesses at the congressional hearing, include:

- Using the Uruguay formula, instead of the Swiss formula, for tariff reduction that will not lower disparities between the US and EU tariffs;[21]
- Using bound rates, which are normally higher than applied rates, as the basis for negotiations;
- Provisions on Special and Differential Treatment that favor developing countries too much and for too long;
- Linking food assistance to the WTO;

[21] The Uruguay tariff reduction formula is to reduce tariff on average equal to the agreed percentage, but have to reduce tariff in each product category not less than the minimum requirement. The Swiss formula (or harmonization formula), which is considered more ambitious, will not focus on average reduction, but rather use a coefficient to determine tariff reduction. The Swiss formula, therefore, will demand more reduction in high tariff product category and less reduction in low tariff product category.

- Insufficient reduction of export subsidy and domestic support.

The **Virginia Poultry Federation** and the **American Farm Bureau Federation** insist that the status quo should be maintained if the Harbinson proposal is not revised.

Industry representatives generally disagreed with the EU's proposal to include non-farm concerns, and geographical indication (GI) in the negotiations, arguing that non-farm concerns and GIs serve as a form of protection. Industry groups insisted that the US should not allow the SPS agreement to be renegotiated in the WTO negotiations and should pressure other countries not to use non-sound science as a justification to restrict trade.

Roney from the **American Sugar Alliance** argued the US should not decrease protection for the sugar industry until the WTO can agree on how to reform the global sugar industries. He claims that the US sugar industry is competitive and efficient, but could not compete in the world market because other countries subsidize their products.

McDonald from the **International Market Committee** stated that if the US wants to expand tariff rate quotas ("TRQs") on livestock, it should negotiate forcefully in the multilateral round to seek special protection for perishable, seasonal and cyclical producers by, for example, allowing special safeguards.

II. Regional and Bilateral FTAs

Different industries hold different views on the costs and benefits of regional and bilateral free trade agreements. However, most industries agree that negotiations on domestic support should only be done at the WTO level and not at the regional or bilateral level.

Most of the industries represented at the hearing agreed that proliferation of FTAs would benefit the US agricultural industries as long as the problems restricting trade and trade distortions are addressed.

Fair Trade

Reeves testified that the members of the **National Cattlemen's Beef Association** would not benefit overall from a U.S.-Australia FTA. As an example, he said that Australia did not fill its TRQ in 2002 to allow more imports from the US, despite a decline in domestic supply as a result of the drought. An FTA, he concluded, would not solve this problem. Therefore, unless Australia improves it TRQ administration, there is no guarantee that the US industry will gain market access.

Food Standards

- Camerlo from the **National Milk Producers Federation** said that Australia maintains strict sanitary and phytosanitary standards on agricultural imports. The US-Australia FTA would harm milk producers in the US, partly because of a potential import surge from Australia.

- When asked a question about whether New Zealand should be considered in the agreement, Camerlo said that the US government should not continue the FTA with Australia and should not include New Zealand in the negotiations.

- One of the biggest concerns of the industries in the US-Chile FTA is food standards. Bauhan, from the Virginia Poultry Federation testified that, even though Chile agrees in the FTA to accept US standards for poultry, Chile has a two-year period in which to conform to US standards. US exporters cannot ship the products to Chile in this two-year period, since Chile does not recognize the USDA's inspection system for poultry.

- Bauhan noted that Australia protects its chicken industry by maintaining "unreasonable" safety standards.

Trade Distortion

- Lavigne, representing **Florida Citrus Mutual**, argued that the domestic orange juice business would not benefit from the FTAA because they cannot compete with Brazil. The FTAA would bring in more competition from Brazil without generating new substantial markets in the Western Hemisphere.

- Lavigne added that Brazil orange juice producers receive huge subsidy from the government, which would not be addressed in the FTAA.

- The **American Sugar Alliance** argues the domestic industry cannot compete in the global market because foreign countries provide massive subsidies to their industries. If global and regional trade negotiations aim to reduce agricultural tariffs and increase TRQs without effectively tackling the issue of domestic support and export subsidies, then the domestic sugar industry will be worse off.

- The **American Soybean Association** representative emphasized the domestic industry cannot compete with Brazil because Brazil subsidizes its products.

III. Trade Agreement Implementations

Existing trade agreement must be enforced

Industry representatives emphasized that bringing trade partners into compliance with the terms of trade agreements is equally important, if not more important, than reaching an agreement. Some agricultural industries are unsatisfied with lack of enforcement in foreign countries such as China, Mexico and Russia, especially due to the importance of these markets for US exporters. They asked the USTR to work harder to ensure that US trading partners live up to their obligations.

Mexico – unilaterally renegotiating the agriculture provisions in NAFTA

The President of the **National Pork Producers Council** ("NPPC") insists that the Mexican Government is unilaterally withdrawing concessions that it made to the US in the NAFTA. The President of the NPPC said the Mexican Government is illegally using its antidumping laws and sanitary practices at the border to restrict US agriculture exports. He characterized the antidumping investigation that Mexico initiated against US pork exports as the "greatest abuse ever" of WTO dumping rules.

Corn growers are also experiencing problems with Mexico. Boisen, Chairman of **National Corn Growers Association**, stated that renegotiation of NAFTA is unwise and unproductive for both countries.

Russian TRQ violates US-Russia Trade Agreement of 1992

Caspers, **NPPC**, noted that the implementation of the pork tariff rate quotas by the Russian Government aims to restrict imports. This resolution contradicts the US-Russia trade agreement of 1992, where MFN treatment for both countries is recognized.

China and its WTO accession Commitments

The **NPPC** is concerned about China's compliance with the terms of its WTO accession commitments. China is limiting imports by using health certificates and not recognizing veterinary equivalence.

Greene from the **National Cotton Council** expressed his hope that the latest discussions with the Chinese officials will result in a change in import policies to comply with the terms of the US-China WTO accession agreement. Greene urged the Administration to publish rules for implementing a safeguard mechanism for the flood of Chinese imports in textiles.

IV. US- EU issues

Export Subsidies

Zanger from the **California Farm Bureau Federation** argued that EU subsidies distort the market for US crop exports, and increase unfair competition in third markets where US products compete directly with EU products. He called for immediate prohibition on the use of export subsidies.

Domestic Support

Zanger noted the striking difference in the level of domestic support between the EU and the US. While in the US there is some support to some of the producers, the EU is heavily subsidizing almost all of the agricultural sectors. He insisted this disparity should be eliminated in the current negotiations.

CAP Reform

The EU continues to discuss possible compromises on its Common Agriculture Policy (CAP). The proposed CAP reform will make the European agriculture more competitive and market oriented, facilitate the enlargement process, and will help in the WTO negotiations. The key elements of the reform are:

- A single farm payment, independent from production (decoupling);
- Linking those payment to the respect of environmental, food safety, animal welfare, health and occupational safety standards, as well as the requirements to keep all farmland in good condition (cross-compliance);
- A stronger rural development policy with more money, new measures to promote quality, animal welfare and to help farmers to meet EU production standards;
- A reduction in direct payments (degression) for bigger farms to generate additional money for rural development and the savings to finance further reforms;
- Revisions to the market policy of the CAP.

On June 18, the Commission presented a compromise proposal on the link between production and subsidies to prevent a breakdown of the WTO Doha Round negotiations. The French-German compromise proposal would have postponed until 2006 the Commission reform plan to cut the link between farm subsidies and production. The UK and allies insist urge de-linking them immediately.

OUTLOOK

Participants at the hearing agreed that the trade negotiation priorities are eliminating export subsidies, reducing domestic support and harmonizing tariffs. A balance needs to be found between market access and domestic support at the WTO negotiations in Cancun.

The US has already filed a complaint against Mexico at the WTO over Mexico's antidumping duties against US beef and rice. Failure to resolve the NAFTA agriculture disputes surely would exacerbate tension in the bilateral relationship and could decrease support for future FTAs in the US Congress.

Analysts are closely watching progress on the internal EU CAP negotiations, as these negotiations could help break the deadlock in the WTO negotiations.

WTO Panel Rules Against US Safeguard Measure on Steel

SUMMARY

A WTO Panel on July 11, 2003 has ruled that the U.S. safeguard measure on steel violates GATT Article XIX and the Agreement on Safeguards.

In March 2002, the United States imposed definitive safeguard measures on ten steel product groups, in the form of additional tariffs ranging up to 30%. The WTO-consistency of these measures was challenged by the EC, Japan, Korea, China, Switzerland, Norway, New Zealand and Brazil.

The Panel found that the U.S. measure was WTO-inconsistent for the following reasons:

- Failed to provide a "reasoned and adequate explanation" that "unforeseen developments" had resulted in increased steel imports, thereby causing serious injury to U.S. producers. The United States had argued that the "unforeseen circumstances" were the Asian and Russian financial crises, the continued strength of the U.S. market and U.S. dollar, and "the confluence of all these events." However, the Panel found that, in light of the complexity of the unforeseen developments argued by the United States, there was a need for "more elaborate demonstration and supporting data";

- Did not provide a reasoned and adequate explanation of how the facts supported the U.S. determination regarding "increased imports" of foreign steel;

- Failed to establish a "causal link" between increased imports and the serious injury. The Panel used "coincidence analysis" to assess "the temporal relationship between the movements in imports and the movements in injury factors." Applying earlier Appellate Body jurisprudence, the Panel said that the absence of coincidence would require "a compelling explanation" as to why a causal link nevertheless existed. In the view of the Panel, the United States did not show a "genuine and substantial relationship of cause and effect" between increased imports and serious injury; and

- Breached the principle of "parallelism" by including imports from the free-trade partners of the United States for the purpose of the injury analysis, and then excluding these countries from the application of the safeguards measure.

USTR has announced its intention to appeal.

ANALYSIS

This is a very guarded decision. The Panel, likely sensitive to the highly-politicized nature of this dispute, cast its findings on a very narrow basis.

The Panel strictly applied the tests articulated by the Appellate Body in earlier safeguards cases. Moreover, under the rubric of exercising "judicial economy", it ducked many of the

claims that had been argued by the complainants, including like products, serious injury, and "special and differential treatment" for developing countries. Even where the Panel examined a specific claim, it often confined its reasoning to that which was strictly necessary to make a finding. (For example, on the issue of "parallelism", it avoided any substantive discussion on whether the United States could rely on GATT Article XXIV to exempt its FTA partners from the application of the safeguards measure.)

If upheld on appeal, the narrow scope of the decision, and the failure of the Panel to deal with some key issues, may create problems for the complainants at the implementation stage. Many of the defects found by the Panel relate to the fact that the U.S. International Trade Commission (USITC) did not provide "reasoned and adequate explanations" for its determinations, a defect that can be remedied relatively easily by the United States.

The Panel justified its use of judicial economy, in part, on the need to promote the "prompt settlement of disputes." Unfortunately, by failing to rule on some of the more fundamental claims advanced by the complainants, this decision may have precisely the opposite effect.

I. Background

In March 2002, the United States imposed definitive safeguard measures on ten steel product groups, in the form of additional tariffs ranging up to 30%. The WTO-consistency of these measures was challenged by the EC, Japan, Korea, China, Switzerland, Norway, New Zealand and Brazil.

This was an "as applied", and not as "as such" challenge. The complainants thus impugned the U.S. measures as applied in the steel case, although there was no "as such" challenge either to the U.S. safeguards statute (Section 201) or to the practices of the USITC.

The interim report of the Panel was issued in March, 2003, and the results were widely leaked to the press. The final report was circulated on July 11.

II. Comments

Agreement on Safeguards and GATT Article XIX - Panel's interpretive approach

The Panel began its analysis by quoting with approval the statements from the Appellate Body decisions in *US - Line Pipe* and *Argentina - Footwear* that "safeguard measures were intended by the drafters of the GATT to be matters out of the ordinary, to be matters of urgency, to be, in short, 'emergency actions.' And, such 'emergency actions' are to be invoked only in situations when, as a result of obligations incurred under GATT 1994, a Member finds itself confronted with *developments it had not 'foreseen' or 'expected' when it incurred that obligation.*" [original emphasis.] Thus, in the view of the Appellate Body - and of the Panel in the *Steel* case - Article XIX is "clearly, and in every way, an extraordinary remedy."

The Panel also quoted *Line Pipe* for the proposition that there is a "natural tension" between "one the one hand, defining the appropriate and legitimate scope of the right to apply safeguard measures" and "on the other hand, ensuring that safeguard measures are not applied against 'fair trade' beyond what is necessary to provide extraordinary and temporary relief."

"Unforeseen Developments": U.S. argument on "confluence of developments" rejected

The United States argued that the "unforeseen developments" that justified the safeguard measure against steel were the Asian financial crisis, the Russian financial crisis, the "continued strength of the U.S. market and the persistent appreciation of the U.S. dollar", and "the confluence of all these events."

The disputing parties were in agreement that the operative time at which the developments "should have been unforeseen" was the end of the Uruguay Round.

The Panel accepted, "at least conceptually", that the Asian and financial crises could be considered as unforeseen developments that did not exist at the conclusion of the Uruguay Round. (Although the USSR had already dissolved by the time the Uruguay Round had concluded, the Panel recognized that "there may be instances when an event which is already known will develop into a situation initially unseen." Therefore, in the view of the Panel, the Russian financial crisis was an example of an unforeseen development that had evolved from "well-known prior facts.") As for the developments related to the U.S. economy, USTR argued that these should not be considered as "stand-alone 'unforeseen developments', but were rather were part of the confluence of developments that together had resulted in increased imports that were causing or threatening to cause injury."

The Panel ruled that, in light of the complexity of the unforeseen developments argued by the USITC, there was a need for "more elaborate demonstration and supporting data." As the Panel noted dryly, "one is left to wonder how much steel was displaced in the first place, and from where."

Therefore, the U.S. safeguard measures were found to be in violation of both GATT 1994 and Article 3.1 of the *Agreement on Safeguards* since the USITC report did not provide "a reasoned and adequate explanation of how the confluence of the Asian and Russian crises, together with the strong United States economy and U.S. dollar *actually resulted in specific increased imports into the United States causing serious injury* to the relevant domestic producers." [emphasis added.]

Increased imports: "recent, sudden, sharp and significant"

Article 2.1 of the Safeguards Agreement requires that before a Member can impose a safeguards measure, it must determine that "a product is being imported....in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products."

In interpreting Article 2.1, the Panel applied the Appellate Body's reasoning in *Argentina Footwear* that "not just *any* increased quantities of imports will suffice." Rather, according to *Argentina Footwear*, "the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause 'serious injury'."

The United States objected to this test, arguing that the wording of Article 2.1 did not include any reference to the terms "recent" "sudden", "significant", and "sharp." Although the Panel conceded that there were no "absolute standards" regarding how sudden, recent or significant the increase must be, it reasoned that "one cannot conclude that there are no standards at all." It therefore proceeded to apply the *Argentina Footwear* test to the U.S. measures.

The Panel found that many (although not all) of the U.S. measures fell short of the standards set out in the Agreement, since the USITC report did not provide "a reasoned and adequate explanation" of how the facts supported the determination that imports were being imported in "increased quantities."

Causation: U.S. failure to establish a "genuine and substantial relationship of cause and effect"

Article 4.2(b) of the Agreement provides that the competent authorities must demonstrate causation, i.e. "the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof." This provision also embodies the so-called "non-attribution" rule: when factors other than increased imports are causing injury, "such injury shall not be attributed to increased imports."

The Panel began its causation analysis by recalling the Appellate Body finding in *U.S. - Wheat Gluten* that Article 4.2(b) requires a "genuine and substantial relationship of cause and effect" between increased imports and serious injury.

In considering what standard of assessment to use to determine whether there was a "genuine and substantial relationship of cause and effect", the Panel (relying on *US - Lamb* and *Wheat Gluten*) reasoned that it was not necessary for the competent authority to show that increased imports "alone" must be capable of causing serious injury. Instead, if a number of factors have caused serious injury, a causal link could be demonstrated if the increased imports have, in some way, contributed to "bringing about", "producing", or "inducing" the serious injury.

In assessing which analytical tool should be used to establish a causal link, the Panel stated that "coincidence analysis" was central. The Panel defined "coincidence", in this context, as "the temporal relationship between the movements in imports and the movements in injury factors." The Panel stated that it agreed with the reports in *Argentina Footwear* and *Wheat Gluten* that coincidence in movements in imports and the movements in injury factors would ordinarily tend to support a finding of causation, while "the absence of such coincidence would ordinarily tend to detract from such a finding and would require a compelling explanation as to why a causal link is still present."

The Panel said that while coincidence played a central role in determining whether a causal link exists, other analytical tools could also come into play, such as a reference to the "conditions of competition" between imports and domestic products, with a view to providing "a compelling explanation, in the absence of coincidence, as to why a causal link nevertheless exists."

The Panel also noted that when factors other than increased imports are causing injury, the competent authorities are required to perform a non-attribution exercise to assess the effects of these other factors, so that injury caused by those other factors are not attributed to increased imports. The Panel referred to the Appellate Body's finding in *Line Pipe* that: "the competent authority must establish explicitly, through a reasoned and adequate explanation, that injury caused by factors other than increased imports is not attributed to increased imports." Such an explanation, according to the Appellate Body, must be "clear and unambiguous."

Applying this analytical framework to the specific measures, the Panel found that the United States had failed to demonstrate causality for most of the subject products. The WTO-inconsistencies identified by the Panel included failure to provide a reasoned and adequate explanation that coincidence existed, failure to provide a compelling explanation that demonstrated a causal link in the absence of coincidence, and breach of the non-attribution rule. Thus, for these products, the USITC did not show a "genuine and substantial relationship of cause and effect" between increased imports and serious injury.

"Parallelism": WTO-inconsistent exclusion of FTA countries from scope of safeguard measure

The United States included imports from its FTA partners (Mexico, Canada, Israel and Jordan) for the purpose of the injury analysis, and yet excluded these countries from the application of the safeguards measure. The Panel found that this breached the requirement of "parallelism" in Articles 2 and 4 of the Agreement. The Panel found that the United States failed to establish explicitly, with an adequate and reasoned explanation, that increased imports from non-FTA sources alone caused serious injury or threat of serious injury.