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LIMITED LIABILITY PARTNERSHIP

Japan External Trade Organization  
**WTO AND REGIONAL TRADE AGREEMENTS**  
**Monthly Report**

*February 2004*



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

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## SUMMARY OF REPORTS

### Special Report

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#### **Status Report on the First “World Summit on the Information Society”; WSIS Could Have Far-Reaching Implications for the Internet and Intellectual Property Protection**

We had previously reported in May 2003 on the preparatory efforts leading up to the first session of the World Summit on the Information Society (“WSIS”), which took place in Geneva from December 10-12, 2003, and some of the more difficult issues that would be addressed at this global conference.

Throughout the preparatory process and at the first WSIS session, the U.S. focused its principal attention on four key issues: Internet governance; intellectual property concerns, digital solidarity fund and the role of the private sector. Now that the first session has taken place, we provide here an analysis of the major issues considered and principal actions taken at that session.

#### **Delays Persist in Congressional Efforts to Comply with WTO Rulings Against the 1916 Act, ETI/FSC Benefits and Byrd Amendment**

The World Trade Organization (WTO) has ruled in the last several years that certain U.S. trade-related laws are inconsistent with the WTO Agreements:

- The Revenue Act of 1916 (“Antidumping Act of 1916” or “1916 Act”);
- The Extraterritorial Income Exclusion (“ETI”, formerly “FSC”) Act of 2000; and
- The US Continued Dumping and Subsidy Offset Act (“Byrd Amendment” or “CDSOA”).

Members of Congress have introduced legislation in an attempt to comply with WTO rulings and stave off retaliation. However, the bills for all these matters remain stalled in Congress. Moreover, delays persist due to a tight congressional schedule this year (and due to elections), Members’ wariness of offending key constituents (especially for the ETI/FSC and Byrd Amendment), and general disagreement regarding how to address the inconsistencies.

### United States

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#### **President's FY2005 Budget Would Decrease USTR Budget; Increases Spending for Customs Initiatives**

On February 2, 2004, the President transmitted to Congress his budget proposal for FY2005. The budget provides for increases in defense and homeland security spending, while keeping growth to other non-discretionary spending to under 4%.

The Doha Development Agenda (DDA) remains the top negotiating priority of the Administration. Completion of free trade negotiations with the countries of the Free Trade of

the Americas (FTAA) is expected prior to the end of 2004.

### **Congressional Trade Staff Offers Cautious Assessment of 2004 Trade Legislation**

On February 5, 2004, the Washington International Trade Association (WITA) hosted its annual "Congressional Trade Update." The event featured House and Senate trade counsels from the Democratic and Republican parties. Staffers agreed that the 2004 election cycle will complicate passage of trade legislation. Staffers also agreed that passage of the Central American Free Trade Agreement (CAFTA) and the US-Australia Free Trade Agreement is increasingly unlikely in 2004, although it is possible that Congress will consider FSC/ETI legislation.

Republican staffers focused their remarks on using trade policies to promote job creation. Democratic staffers focused on developing a policy for selecting bilateral trade partners, and the need to protect core labor and environment standards.

### **NHTSA Extends Automotive Fuel Economy Manufacturing Incentives for Alternative Fueled Vehicles**

On February 19, 2004, the National Highway Traffic Safety Administration (NHTSA) published a final rule, extending the incentive created by the Alternative Motor Fuels Act of 1988 to encourage the continued production of motor vehicles capable of operating on alternative fuels for four additional years.

The amendments made in the final rule are effective October 1, 2004. Any petitions for reconsideration must be received by NHTSA no later than April 5, 2004.

## **Free Trade Agreements**

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### **US Concludes FTA With Australia; President Notifies Congress of Administration's Intention to Enter into FTA**

On February 8, 2004 the United States Trade Representative (USTR) announced that it had concluded Free Trade Agreement (FTA) negotiations with Australia. With more than 99 percent of US manufactured goods that will become duty-free immediately, the FTA provides for the most significant reduction of industrial tariffs ever achieved in a US FTA.

President Bush officially notified Congress of the Administration's intent to enter into the FTA on February 13, 2004.

USTR will release the draft text of the US-Australia FTA "in the near future".

### **US and Costa Rica Conclude Negotiations; Costa Rica to Join CAFTA; USTR Releases Draft Text of CAFTA**

On January 25, 2004, the United States Trade Representative (USTR) announced that the US and Costa Rica concluded negotiations to complete Costa Rica's participation in the US-Central America Free Trade Agreement (CAFTA). During a final round of negotiations from January 19-25, 2004, the US and Costa Rica resolved outstanding issues in areas such as market access for agriculture, textiles and apparel, and services.

USTR released the draft text of the CAFTA on January 28, 2004. The draft text of the agreement is available at [www.ustr.gov](http://www.ustr.gov)

The US Administration also seeks to include (or "dock") the US-Dominican Republic FTA into the CAFTA by the end of March 2004. USTR hopes to submit the full CAFTA to Congress by early July 2004.

### **USTR Notifies Congress of Its Intent to Negotiate FTA with Thailand; Announces Hearing and Requests Comments on US-Andean FTA**

We want to alert you to the following Free Trade Agreement (FTA) developments:

- On February 12, 2004, the United States Trade Representative (USTR) notified Congress of its intention to negotiate an FTA with Thailand. Under Trade Promotion Authority (TPA), negotiations may now begin in 90 days.
- On February 17, 2004, USTR announced that it will hold a public hearing on the US-Andean FTA ("AFTA") on March 17, 2004. USTR also requested for comments, which are due by March 30, 2004.

### **US and Bahrain Launch First Round of FTA Negotiations; US Signs TIFAs With Kuwait and Yemen**

On January 26, 2004, the United States Trade Representative (USTR) announced that the US and Bahrain had launched a first round of negotiations on a Free Trade Agreement (FTA). The goal is to complete the FTA by the end of the year.

In a related development, the United States on February 6, 2004 signed Trade and Investment Framework Agreements (TIFAs) with Kuwait and Yemen.

The FTA with Bahrain and the TIFAs with Kuwait and Yemen are part of President Bush's initiative to advance economic reforms and transparency in the Middle East and to establish a Middle East Free Trade Area (MEFTA) by 2013.

## **Customs**

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### **COAC Holds First Meeting of 2004; Receives Updates on Key CBP Programs**

On February 6, 2004, the Departmental Advisory Committee on Commercial Operations (COAC) of the Bureau of Customs and Border Protection (CBP) held its first meeting of 2004. Department of Homeland Security (DHS) Undersecretary Asa Hutchinson briefed COAC on the status of the President's FY2005 budget request. In addition, COAC members and CBP representatives discussed CBP organizational changes, and the status of current major CBP programs and initiatives.

Discussion focused on the enforcement of the Bioterrorism Act (BTA) and the inspection/validation process for members of the Customs-Trade Partnership Against Terrorism (C-TPAT). COAC members responded positively to the phased enforcement of the BTA. However, COAC expressed concerns regarding the lack of statistical data on the C-TPAT program. As a result, members were reluctant to endorse DHS suggestions for more robust C-TPAT validation processes.

## **TSA Announces Issuance of All-Cargo International Security Procedures for Foreign Air Carriers; CBP Extends General Program Test Regarding Post Entry Amendment Processing**

We want to alert you to the following Customs developments:

- On January 27, 2004, the Transportation Security Administration (TSA) announced the issuance of All-Cargo International Security Procedures (ACISP) for foreign air carriers.
- On February 6, 2004, the Bureau of Customs and Border Protection (CBP) announced an extension of the general program test regarding post entry amendment processing. The test is extended until December 31, 2004.

## **Petitions and Investigations**

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### **USTR Requests ITC Regarding Possible Modifications to GSP Program**

The United States Trade Representative (USTR) recently requested that the International Trade Commission (ITC) conduct an investigation regarding the probable economic effect on US industries producing like or directly competitive articles and on consumers of the elimination of US import duties for all beneficiary developing countries under the Generalized System of Preferences (GSP) program.

## **GAO Reports**

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### **GAO Report Analyzes FTA Selection Criteria; Criticizes FTA Resource Management**

On January 12, 2004, the United States General Accounting Office (GAO) released a report entitled "Intensifying Free Trade Negotiating Agenda Calls for Better Allocation of Staff and Resources." Senator Max Baucus (D-Montana) and Representative Cal Dooley (D-California) requested the GAO review on how the US selects FTA partners, particularly the interagency process and the administration's resource allocation.

The GAO report concludes that the ambitious pace of FTA negotiations will require better management of resources across diverse trade agencies. The GAO recommends that USTR work with other key trade agencies to adopt more systematic data and interagency resource planning.

The GAO reports that the factors used to select FTA partners often reflect U.S. strategic, foreign policy, and foreign economic development goals. Senator Baucus and Representative Dooley in their responses to the GAO report highlighted these findings. They urged the administration to give more consideration to commercial interests when selecting FTA partners.

### **GAO Concludes Commerce Needs to Improve Post-Shipment Verification Checks of Dual-Use Technology Exports**

On February 11, 2004, the General Accounting Office ("GAO") released a report on the post-shipment verification ("PSV") checks that the US Department of Commerce ("Commerce")

conducts to ensure that dual-use technologies arrive at their destination and are used for the purpose stated in the export license.

The report identifies several weaknesses that reduce the effectiveness of the PSV checks, and recommends that Commerce:

- Improve the technical training for enforcement personnel conducting the PSV checks;
- Ensure that enforcement personnel conducting PSV checks assess compliance with license conditions; and
- Require that exporters inform the end user in writing of the license conditions.

## **US-EU**

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### **EU and US to Re-launch Transatlantic Dialogue; Conclude Agreement on Container Security Cooperation**

The EU and US Chambers of Commerce have recently launched an initiative to revive the Transatlantic Business Dialogue. Their efforts were supported by the US Commerce Secretary Donald Evans who announced in Davos the US government's commitment to the creation of barrier-free trade between the two largest economies in the world.

On a separate note, the European Commission has just published the final version of the Agreement with the US on Customs Cooperation on Container Security. This agreement will expand the existing Customs Cooperation Agreement and enable US customs authorities to operate in EU ports.

## **US-Latin America**

## **FTAA**

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### **Co-Chairs Suspend FTAA Puebla TNC as Positions Harden; Attempt to Resume Discussions in March**

On February 6, the FTAA Co-Chairs, the US and Brazil, announced that delegations at the FTAA Puebla Trade Negotiations Committee ("TNC") meeting need more time to consult with their capitols and other delegations. Therefore, the co-chairs decided to recess and reconvene, tentatively, during the first week of March.

The Puebla TNC meeting aimed to develop guidance to the FTAA negotiating groups in accordance with the new negotiating structure mandated by the Miami Ministerial.

A USTR official noted that the delegations in Puebla were unable to "strike the right balance." The official contrasted the position of the United States and 13 other countries, which seemed willing to ratchet down commitments to build a common agreement, as opposed to the position of Mercosur, which refuses to lower expectations on agriculture and non-agricultural market access.

## **WTO Reports**

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## **WTO Trade Policy Review of the United States More Critical Than in Past; Members Welcome USTR Zoellick Initiative on Doha Round**

The World Trade Organization (WTO) has recently concluded the biannual Trade Policy Review (TPR) of the United States, based on the WTO Secretariat's report, the U.S. Government policy statement and scrutiny by WTO Members. The Secretariat's report contains a comprehensive review of U.S. trade policy covering the period 2001-2003, including recent economic developments, trade policies by measure, and sector-specific issues.

WTO Members, both industrialized and developing countries, stepped up their criticism of U.S. practices as compared to previous years. The Secretariat's report warned of risks to the multilateral trading system due to mounting U.S. fiscal and trade deficits, and U.S. attention to FTA agreements. The Secretariat and Members also raised concerns on access to the U.S. market due to trade remedy barriers, new trade-related security measures, and the possible distorting effects of the U.S. Farm Bill. Members strongly criticized the lack of U.S. compliance with WTO dispute settlement rulings and market access barriers in sectors of interest to developing countries.

Members also used the occasion of the TPR meeting to welcome USTR Zoellick's initiative urging new momentum to the stalled "Doha Round." Members generally viewed this development as a positive sign from the United States, and an indication of its commitment to the WTO and the Round.

## **Restart of Negotiations in the WTO Doha Development Agenda; USTR Zoellick Visits Key Capitals to Spur Momentum in the Round**

The General Council of the World Trade Organization, at its meeting on 11 and 12 February, took the decisions necessary to restart the negotiations which have been suspended since the failure of the Ministerial meeting in Cancun in September. Delegations in Geneva and officials visiting from capitals will now restart an intensive process of meetings of the negotiating groups, culminating in a "reality check" of substantive progress in July. The Council, however, was unable to agree on a date for the next Ministerial Conference, which makes it very unlikely that it could be held during 2004.

Meanwhile, USTR Zoellick is at the conclusion of his "world tour" of key capitals and other meetings to encourage momentum to the Round, as a follow-up to his letter to Ministers in January. Zoellick has met with many ministers since February 11, including in Tokyo, Beijing, Singapore, Islamabad, New Dehli, Mombasa (Kenya), Cape Town, Geneva, Paris (and shortly in Costa Rica). Among his ideas, he has proposed holding a "Special Session" in Geneva by this summer (by July), which could include ministerial-level participation in order to agree on frameworks for moving negotiations forward on agriculture, industrial market access, the Singapore Issues, and other matters left outstanding since Cancun.

Zoellick has reported that overall, there is strong support for moving the Doha process forward this year, and the most critical issue is to set targets for agriculture liberalization.

## REPORTS IN DETAIL

### SPECIAL REPORTS

#### **Status Report on the First “World Summit on the Information Society”; WSIS Could Have Far-Reaching Implications for the Internet and Intellectual Property Protection**

##### *SUMMARY*

We had previously reported in May 2003 on the preparatory efforts leading up to the first session of the World Summit on the Information Society (“WSIS”), which took place in Geneva from December 10-12, 2003, and some of the more difficult issues that would be addressed at this global conference.

Throughout the preparatory process and at the first WSIS session, the U.S. focused its principal attention on four key issues: Internet governance; intellectual property concerns, digital solidarity fund and the role of the private sector. Now that the first session has taken place, we provide here an analysis of the major issues considered and principal actions taken at that session.

#### **I. WSIS Update – Phase I Completed; Phase II on the Horizon**

The stated purpose of WSIS is “the development of a common vision and understanding of the information society and the adoption of a declaration and plan of action for implementation by Governments, international institutions and all sectors of civil society.” (UN General Assembly Resolution 56/183.) WSIS had been conceived as a formal Summit, conducted under U.N. auspices, which would be held in two sessions – the first in December 2003 and the second in November 2005. The first session, held in Geneva, Switzerland, on December 10-12, 2003, was attended by over 10,000 delegates from 176 countries, including more than 50 heads of state. The second session will be held in Tunis, Tunisia in November 2005.

Ambassador David Gross, U.S. Coordinator for International Communications and Information Policy in the U.S. State Department served as the head of the U.S. delegation to the first WSIS session. John Marberger, the Director of the White House Office of Science and Technology Policy also attended as part of the U.S. delegation and made the main U.S. presentation.

#### **A. U.S. Objectives for the First WSIS Session**

From the U.S. perspective, the outcome of first WSIS session was about as successful as it could have been. The U.S. had approached the preparatory efforts for WSIS with a mixture of optimism and trepidation. The optimism was predicated on the opportunity WSIS provided to highlight the growing importance of the global information society in promoting economic prosperity and sustained development as well as encouraging the spread of democratic principles. The trepidation came from concerns that the Summit could become a stalking horse for efforts to restrict the private sector’s preeminence in driving the spread of new and innovative telecommunications technologies, including the Internet, while elevating governmental involvement with and control over such matters. The U.S. also feared a

possible assault on intellectual property protections currently afforded various information technologies, rationalized on the basis of the desirability of increased access or availability of such technologies to the developing world.

## **B. Declaration and Plan of Action**

The principal output of the first session of WSIS consisted of two documents – a “Declaration of Principles” and a “Plan of Action”. The preparatory efforts leading up to the adoption of these two documents were lengthy but largely unfocused, leaving significant uncertainty until the very end as to whether consensus could be achieved on the wording of either document.

## **C. Civil Society Participation**

The dynamics of the preparatory process and, to a lesser extent, the meeting itself, were also significantly influenced by the active participation of “civil society”. In this regard, the role played by “civil society” in the WSIS preparatory process shared certain similarities with that of “non-governmental organizations” or “NGOs” at the September 2003 Cancun Ministerial as part of the Doha Round of World Trade Organization negotiations. Fortunately, unlike Cancun, the divisiveness of such efforts receded by the time of the Summit itself and none of the more explosive issues ignited in a fashion that prevented the meeting from achieving its basic objectives.

## **II. Major Issues in the WSIS Preparatory Process**

Throughout the preparatory process and at the first WSIS session, the U.S. focused its principal attention on four key issues: Internet governance; intellectual property concerns, digital solidarity fund and the role of the private sector. We discuss the status of discussions on each of these four issues below.

### **A. Internet Governance**

The most difficult and far-reaching issue arising during the preparatory process was the extent to which governments would seek to become more actively involved in matters relating to Internet governance, either by creating a new international organization for this purpose or tasking an existing organization, such as the International Telecommunication Union (“ITU”) with this responsibility. Even though the term “Internet governance” was never clearly defined, this issue generated considerable attention, fed by misinformation and misunderstanding about the general role and responsibilities of the Internet Corporation for Assigned Names and Numbers (“ICANN”) and its relationship to the U.S. Government. ICANN is an internationally-organized non-profit corporation principally devoted to coordinating the technical aspects of domain name management activities. However, there has been a widespread perception around the world that ICANN was heavily involved in all aspects of Internet governance and that its activities in this regard were essentially controlled and directed by the U.S. Government.

A number of countries, including the U.S., believed that the Internet’s successful development to date had been achieved primarily through the efforts of the private sector. Further, they feared that increased governmental oversight would impede rather than promote the Internet’s future growth and development. In light of these concerns, the first WSIS session did not result in an overt effort to establish a greater role for governments in Internet

governance matters. Instead, the principal action taken at WSIS regarding Internet governance was to request the UN Secretary General to establish a Working Group, open to participation by governments, the private sector and civil society, tasked with the following four action items:

- 1) develop a working definition of Internet governance
- 2) identify the public policy issues that are relevant to Internet governance
- 3) develop a common understanding of the respective roles and responsibilities of governments, existing intergovernmental and international organizations and other forums as well as the private sector and civil society
- 4) prepare a report on the result of this activity to be presented for consideration and appropriate action for the second session of WSIS in 2005.

#### **B. Intellectual Property Concerns.**

To the extent addressed by the Declaration of Principles, the subject of intellectual property received fairly favorable treatment in two respects. First, the Declaration of Principles contained a specific acknowledgement that “[I]ntellectual property protection is important to encourage innovation and creativity in the Information Society.” Second, the Declaration of Principles declined to express any preference for open source software over proprietary software, instead reaffirming that “[a]ccess to information and knowledge can be promoted by increasing awareness among all stakeholders of the possibilities offered by different software models, including proprietary, open-source and free software, in order to increase competition, access by users, diversity of choice and to enable all users to develop solutions which best meet their requirements.” The combined effect of these two provisions was to deflect most if not all of the anticipated concerns about possible erosion of intellectual property protection.

#### **C. Digital Solidarity Fund**

Throughout the preparatory process and at the Summit itself, many countries had expressed interest expressed in the establishment of a voluntary Digital Solidarity Fund (“DSF”). The DSF was seen as an important element of the “Digital Solidarity Agenda,” which was aimed at the mobilization of “human, financial and technological resources for inclusion of all men and women in the emerging Information Society.” The U.S. had voiced considerable skepticism about the establishment of the DSF at this time, fueled by questions about how funds would be collected and distributed and how the fund would be managed.

The main action endorsed at the meeting was the establishment of a separate Task Force, again operating under the auspices of the UN Secretary General, to consider this issue further, and in particular to review the adequacy of all existing financial mechanisms to meet the challenges of ICT. This Task Force is to complete its work by the end of December 2004. Based on the outcome of this review, improvements and innovations of financing mechanisms would then be considered at the second WSIS session, including the effectiveness and the feasibility of creating a voluntary Digital Solidarity Fund.

## **D. Role of the Private Sector/Other Developments**

Both the Declaration of Principals and the Plan of Action contain numerous positive references to the importance of the private sector to the future growth and development of the information society, alleviating fears that the private sector's role in promoting the objectives of the information society would somehow be disparaged or diminished.

In addition to these four key issues, there were at least two other developments of some significance. The first concerned the prominent reaffirmation of the principles of freedom of the press and freedom of information contained in the Declaration of Principles. The U.S. was quite pleased at the recognition given to such principles as an important element of defining and promoting a global information society.

The second concerned emphasis placed by the Action Plan on the desirability of increased access to orbital resources, global frequency harmonization and global systems standardization as a means of strengthening access to broadband network infrastructures by developing world countries. Attention to this issue was prompted by a broadband satellite initiative put forward by the International Telecommunications Satellite Organization ("ITSO"), the residual international organization which remained after the privatization of Intelsat's commercial activities, and which is committed to promoting greater access to satellite facilities in the developing world.

### ***OUTLOOK / NEXT STEPS***

At this stage, most players, including the U.S., are catching their breath before beginning on Phase II preparations. This respite, however, will be fairly short lived, as the U.S. State Department has scheduled a meeting of its International Telecommunications Advisory Committee (made up of private sector representatives) in early February 2004, at which U.S. preparatory efforts for the second WSIS session will commence.

Notwithstanding the relatively positive outcome of the first session, there continues to be some apprehension within the U.S. Government and U.S. industry with regard to matters to be taken up at the second WSIS session, particularly with regard to any further deliberations regarding the issue of Internet governance. One development that may contribute to this is the accelerating convergence of voice communications with the Internet, triggered by a proliferation of commercially-available Voice over Internet Protocol ("VOIP") telephony services. This has the potential to rekindle interests in pushing for greater governmental involvement with Internet governance matters.

\* \* \*

White & Case will continue to follow developments relating to the session WSIS session and provide further updates as appropriate. If you are interested in specific matters relating to WSIS or the preparatory process for the second session, please contact Maury Mechanick, Telecommunications Counsel in the Washington, D.C. office of White & Case for further details: [mmechanick@whitecase.com](mailto:mmechanick@whitecase.com). Copies of the Declaration of Principles, the Plan of Action and the State Department Press Release issued regarding WSIS are attached hereto.

## **Delays Persist in Congressional Efforts to Comply with WTO Rulings Against the 1916 Act, ETI/FSC Benefits and Byrd Amendment**

### ***SUMMARY***

The World Trade Organization (WTO) has ruled in the last several years that certain U.S. trade-related laws are inconsistent with the WTO Agreements:

- The Revenue Act of 1916 (“Antidumping Act of 1916” or “1916 Act”);
- The Extraterritorial Income Exclusion (“ETI”, formerly “FSC”) Act of 2000; and
- The US Continued Dumping and Subsidy Offset Act (“Byrd Amendment” or “CDSOA”).

Members of Congress have introduced legislation in an attempt to comply with WTO rulings and stave off retaliation. However, the bills for all these matters remain stalled in Congress. Moreover, delays persist due to a tight congressional schedule this year (and due to elections), Members’ wariness of offending key constituents (especially for the ETI/FSC and Byrd Amendment), and general disagreement regarding how to address the inconsistencies.

### ***ANALYSIS***

We review here the status of pending legislation aimed at making U.S. laws WTO consistent. We also highlight the political forces shaping the Congressional debate.

#### **I. Bills to Repeal 1916 Act Remain Pending; Congressional Passage Difficult, But Pressure Mounts**

##### **A. Background**

In August 28, 2000, the WTO Appellate Body upheld a Panel ruling that Section 801 of the Revenue Act of 1916 (“Antidumping Act of 1916” or “1916 Act”) violated the WTO Antidumping Agreement and the General Agreement on Tariffs and Trade (GATT) of 1994. The 1916 Act allows private parties to sue for treble damages in U.S. courts against importers of goods “dumped” in the US at below-market prices. It also establishes criminal liability for importers of dumped goods.

The EU and Japan filed complaints against the US in the WTO, arguing that the 1916 Act allows the US to impose dumping penalties that could extend far beyond the anti-dumping duties allowed by the WTO. Affected companies have asserted that American companies have used the threat of litigation based upon section 801 to extort settlements from foreign companies.

The WTO gave the US a deadline of December 31, 2001 to comply with its obligations. The US has repeatedly missed this deadline, and other extensions. The EU and Japan were patient with the U.S. delays in compliance because the 1916 Act has been rarely invoked.

The pressure on the US to comply with WTO findings has increased since December when a jury in Iowa awarded \$31 million in damages to a US company arising from a lawsuit brought under the 1916 Act. This award, which is under appeal, has prompted the EU to proceed to the final stages of retaliation (the EU and Japan had sought authorization to retaliate in January 2002). The EU sought authorization to adopt their own legislation mirroring the 1916 Act which would target U.S. exporters exclusively. Additionally, the EU has taken steps to forbid the enforcement of any U.S. judgments obtained under the 1916 Act within the EU through so-called “blocking” legislation.

More recently, a WTO arbitration decision on February 24, 2004, determined that the EU could retaliate subject to certain limits (e.g. damages must be commensurate to the damages suffered by EU companies in the US).

**B. Industry and Congressional Support**

Industries that have been the perceived or actual victims of dumping, most notably the steel sector, support the 1916 Act. Though rarely used, supporters claim the 1916 Act offers them an additional tool in the arsenal to confront foreign producers competing unfairly with U.S. producers.

Congress has considered legislation to address the WTO inconsistencies, including three bills currently on the floor that would repeal the section 801. Legislators, however, disagree over whether legislation to repeal the 1916 Act should be retroactive (only S.1080 would apply the repeal retroactively to all pending cases). The EU and Japan have insisted that legislation be retroactive due to pending cases where damages could, and have been assessed.

Nevertheless, Members of Congress generally hesitate to take action that could be perceived as weakening U.S. trade law. Repeal of the 1916 Act could face criticism from powerful U.S. special interest groups.

**C. Status of Legislation**

The House and Senate have introduced several bills to repeal the 1916 Act. Two House and Senate bills (HR.1073 and S.1155) are identical, and are not retroactive while S.1080 would apply the repeal retroactively to all pending cases.

We highlight the status of these bills below.

<b>BILL / ISSUE</b>	<b>KEY PROVISIONS</b>	<b>STATUS</b>
<p><b>-A Bill to Repeal Section 801 of the Revenue Act of 1916 (HR.1073; S.1155)</b></p> <p><b>-The Antitrust Improvements Act of 2003 (S.1080)</b></p>	<p>-The bills repeal section 801 of the 1916 Act.</p> <p>-HR.1073 and S.1155 are identical, and are non-retroactive.</p> <p>-S.1080 would apply the repeal retroactively to all pending cases.</p>	<p>-House Judiciary Committee Chairman James Sensenbrenner (R-Wisconsin) introduced HR.1073 on March 4, 2003. The House Judiciary Committee approved the bill on January 28, 2004.</p> <p>-HR.1073 was reported to the full House on February 6, 2004 (H. Rept. 108-415). The House</p>

BILL / ISSUE	KEY PROVISIONS	STATUS
		<p>(H. Rept. 108-415). The House placed it on the Union Calendar for consideration. The Calendar No is 238.</p> <p>-Senate Finance Committee Chairman Charles Grassley (R-Iowa) introduced S.1155 on May 23, 2003. The bill awaits action by the Senate Finance Committee.</p> <p>-Senate Judiciary Committee Chairman Orrin Hatch (R-Utah) introduced S.1080 on May 19, 2003. The bill awaits action by the Senate Judiciary Committee.</p>

## **II. EU Authorized to Impose Sanctions in March if US Fails to Repeal ETI**

### **A. Background**

In January 2002, a WTO panel ruled that the Extra-Territorial Income (ETI) Exclusion Act (the successor law applicable to foreign sales corporations or “FSCs”) of 2000 is illegal under WTO rules. Under the Act, U.S. companies enjoy a foreign sales tax break known as the extra-territorial income exclusion. The EU brought the WTO case, and succeed in its claim that the ETI functions as a trade subsidy.

In August 2003, the WTO authorized the EU to impose up to \$4 billion annually in retaliatory trade sanctions on a variety of U.S. products, including agricultural goods, leather, wood and paper, apparel and clothing, glass, iron and steel, machinery, and toys. The EU’s retaliatory list would target politically sensitive states, whose products will face higher tariffs.

The EU has threatened to begin retaliation by March 1, 2004, on a gradual basis, if the US does not comply with the WTO ruling. The EU intends to impose an initial 5 percent retaliatory tariff on certain U.S. exports and would ratchet up the tariff by one percent each month to a ceiling of 17 percent in March 2005.

### **B. Industry and Congressional Support**

While Congress is generally supportive of repealing the ETI, progress has ground to a virtual halt over the competing proposals.

The House bill (HR 2896, aka the American Jobs Creation Act), supported by Ways and Means Chairman Bill Thomas (R-TN), would reduce taxes on the foreign income of multinational firms, as well as provide tax breaks for domestic manufacturers, including software companies like Microsoft. This latter provision was instrumental in gaining the support of Speaker Dennis Hastert (R-IL).



In September 2003, the CEOs of 35 of the largest companies in the US signed a letter addressed to the House and Senate leadership urging passage of the Thomas Bill. The Thomas bill is expected to cost over \$140 billion.

Democrats and Republicans in the House have opposed the Thomas bill. Small Business Committee Chairman Don Manzullo (R-IL) argues that the proposed tax breaks for multinational firms would encourage them to move jobs out of the US (e.g., “outsourcing”). House Democrats also oppose the Thomas Bill because of its high cost.

The Senate version of the ETI repeal (S.1637, (aka the Jumpstart Our Business Strength Act or “JOBS”)) focuses more on tax cuts for domestic manufacturers, and unlike the House bill, would be revenue neutral. Shepherded by Senator Grassley (R-IA) and supported by Representative Charles Rangel (D-NY), the competing bill enjoys strong bipartisan support, and could be debated as early as the last week of February.

The EU has welcomed the efforts by Congress to repeal the longstanding measure, but has criticized some aspects including the three-year phase out period. The EU has repeatedly indicated that it will retaliate beginning in March if progress is not achieved.

U.S. exporters have remained relatively silent on the ETI repeal legislation, and threat of retaliation. Despite the fact that they will face escalating sanctions, they have done little to lobby Congress. Analysts attribute this apathy among exporters to the fact that weakened U.S. dollar has made exports more competitive, thus neutralizing part of the effect of the proposed retaliation. Furthermore, depressed demand from Europe has resulted in low expectations among exporters of any potential export growth, regardless of the imposition of additional tariffs.

### **C. Status of Legislation**

Both the Senate and the House have introduced legislation to repeal the ETI Act. We highlight the status of these bills below.

BILL / ISSUE	KEY PROVISIONS	STATUS
<p><b>-American Jobs Creation Act of 2003 (HR.2896)</b></p> <p><b>-Jumpstart Our Business Strength ("JOBS") Act of 2003 (S.1637)</b></p>	<p>-The bills repeal the ETI Act and instead offer new tax deductions. Both bills thereby contain a three-year phase-out period for the ETI, multi-year phase-in periods for the new tax deductions, and numerous international tax incentives.</p> <p>-HR.2896 would replace the ETI with a number of tax provisions aimed at domestic manufacturers, small businesses, and companies with foreign income. S.1637 would replace the ETI Act with a corporate deduction for all US-based manufacturers that would lower the top corporate tax rate from 35 percent to 32 percent.</p> <p>-HR.2896 is expected to cost \$60 billion over ten years, and includes several revenue-raising provisions to hold this cost down. S.1637 The bill is revenue neutral, setting of revenue raisers to offset the cost of the bill.</p> <p>-HR.2896 contains long phase-in periods specifically for companies with overseas operations.</p>	<p>-House Ways and Means Committee Chairman Bill Thomas (R-California) introduced HR 2896 on July 25 2003. The House Ways and Means Committee passed the bill on October 28, 2003. The bill now awaits action by the full House.</p> <p>-Grassley introduced S.1637 on September 18, 2003. The Senate Finance Committee passed the bill on October 1, 2003. The bill now awaits action by the full Senate, and is expected to reach the floor during the week of March 1, 2004.</p>

### **III. Congressional Resistance Hampers Efforts to Repeal Byrd Amendment**

#### **A. Background**

In January 2003, the WTO Appellate Body supported a previous Panel decision in ruling that the US Continued Dumping and Subsidy Offset Act ("Byrd Amendment" or "CDSOA") of 2000 violated the WTO Antidumping and Subsidies (SCM) Agreements. The amendment allocates funds collected in antidumping and countervailing duty cases to affected domestic producers. Previously, such funds went to the US Department of the Treasury.

Eleven WTO Members raised the dispute, including Australia, Brazil, Canada, Chile, the EU, India, Indonesia, Japan, South Korea, Mexico, and Thailand. The complainants claimed that the amendment functions as an inconsistent remedy under the Antidumping Agreement, and acts as an illegal subsidy.

The US missed the December 27, 2003 deadline for ensuring compliance, and now faces the threat of retaliation by several countries. Brazil, Canada, Chile, the EU, India, Japan, Korea, and Mexico have already requested authorization to retaliate by imposing additional tariffs equivalent to the money disbursed annually to U.S. companies under the Byrd Amendment. The retaliation would therefore vary every year depending on money distributed. The amount of the sanctions and the list of the specific products targeted will be defined at a later stage.

A WTO arbitration panel, established on February 26, 2004, must decide whether to authorize the retaliation and if the proposed retaliatory measures are appropriate. The panel normally would issue its decision within 60 days. However, sources indicate that the panel could miss this target date.

## **B. Industry and Congressional Support**

Industry and congressional support for the Byrd Amendment remains strong. The Bush Administration, however, has proposed the repeal of the Amendment in its budget proposals for the past two years. Congress rejected the proposal last year and reauthorized the appropriation; moreover, it included language in the FY2004 Consolidated Appropriations Act requiring the USTR to defend the Byrd Amendment.

Senate support has been motivated by two factors. First, industries such as steel, textiles, and softwood lumber have opposed repeal of the Byrd Amendment because they would stop receiving payouts. Second, some Senators insist that repealing the Byrd Amendment would be tantamount to relinquishing sovereignty to the WTO.

Supporters of the Byrd Amendment, including the U.S. steel industry, have been fighting hard against a repeal, defending it as a fiscal measure that is available to all petitioners. Supporters emphasize that the Byrd Amendment does not provide specific relief to the domestic industry. Opponents argue that the measure is far more costly than originally envisioned, and distorts trade further by encouraging industries to file trade remedy cases with the intent of collecting "Byrd" money.

## **C. Status of Legislation**

Currently, only the Senate has introduced legislation to repeal the Amendment. We highlight the status of the bill below.

BILL / ISSUE	KEY PROVISIONS	STATUS
<b>Trade Readjustment and Development Enhancement for America's Communities Act of 2003 (S.1299)</b>	-The bill repeals the Byrd Amendment.	-Senator Olympia Snowe (R-Maine) introduced the bill to the Senate Finance Committee on June 19, 2003.  -The bill has not made any progress since it was introduced.

### **OUTLOOK**

The prospects for U.S. compliance in these three outstanding WTO disputes are slim, except perhaps for repeal of the ETI. The dispute over the ETI is the only one among the three that would not modify U.S. trade remedy laws – a topic that is highly sensitive among Members of Congress. ETI repeal, however, is no easy task due to the complexities of reforming a long-standing tax policy (dating to the FSC regime) – which would adversely affect several large and influential U.S. companies. Moreover, the competing bills on ETI would provide benefits to companies based on domestic or overseas manufacturing – an issue that is now swept up in the contentious debate over outsourcing.

The disputes over the 1916 Act and the Byrd Amendment remain problematic, and resolution is not expected anytime soon due to political sensitivities. The 1916 Act should be less difficult of the two to bring into consistency. It also has few supporters since U.S. companies rarely invoke it in seeking relief. Nevertheless, it has its defenders in Congress – more due to principle than pragmatic reasons.

The Byrd Amendment is more problematic and has far-reaching implications. The Amendment has become popular and is defended by a diverse range of U.S. industries, including those who have received or aim to receive financial gain from the measure. Opponents also argue that the Amendment has encouraged more industries to file damaging trade remedy disputes to seek financial gain, apart from relief. The Amendment also has many supporters in Congress, including the author, the politically powerful Senator Robert Byrd of West Virginia – a battleground state in the 2004 presidential elections. Despite the rising cost of the Amendment (close to \$1 billion in annual distributions so far) and the Administration's desire to repeal the measure, most observers do not expect Congress to remove the measure anytime soon, and certainly not this year. The implications are far-reaching as the numerous complaining parties begin to seek retaliation with punitive tariffs, and possibly other measures (like replicating the measure in their own countries).

## UNITED STATES

### **President's FY2005 Budget Would Decrease USTR Budget; Increases Spending for Customs Initiatives**

#### *SUMMARY*

On February 2, 2004, the President transmitted to Congress his budget proposal for FY2005. The budget provides for increases in defense and homeland security spending, while keeping growth to other non-discretionary spending to under 4%.

The Doha Development Agenda (DDA) remains the top negotiating priority of the Administration. Completion of free trade negotiations with the countries of the Free Trade of the Americas (FTAA) is expected prior to the end of 2004.

#### *ANALYSIS*

#### **I. President's FY2005 Budget Would Decrease USTR Budget; DDA Remains Top Negotiating Priority**

On February 2, 2004, the President transmitted to Congress his budget proposal for FY2005. The budget provides for increases in defense and homeland security spending, while keeping growth to other non-discretionary spending to under 4%.

The Doha Development Agenda (DDA) remains the top negotiating priority of the Administration. Completion of free trade negotiations with the countries of the Free Trade of the Americas (FTAA) is expected prior to the end of 2004.

Other highlights of the proposed budget related to international trade include:

- The President calls on Congress to comply with WTO rulings on the Byrd amendment and the Extraterritorial Income Tax Exclusion Act (ETI) by repealing the relevant laws. The budget assumes the repeal of both in terms of government revenues.
- The Administration proposes that the US Trade Representative (USTR) receive \$39.2 million in funding in FY2005, compared to \$42 million for FY2004.
- The International Trade Administration (ITA) of the Department of Commerce would receive an increase of \$20 million for a total of \$384 million in FY2005. The proposed funding provides for the creation of new assistant secretaries for manufacturing and trade promotion. Despite the overall increase in the ITA's budget, expenditures on trade development are reduced by \$8 million to \$56 million, and market access and compliance would be reduced by \$11 million to \$39 million.

#### **II. President's FY2005 Budget Increases Spending for Customs Initiatives**

The budget includes a \$200 million increase in the budget for Customs and Border Protection (CBP), bringing total funding to \$4.6 billion. The increase includes an additional

\$25 million for the Container Security Initiative (CSI) and a \$15.2 million increase for the Customs-Trade Partnership Against Terrorism (C-TPAT).

The proposed budget allocates \$450 million for the development of CBP's automation system, with no less than \$322 million for continued development of the Automated Commercial Environment (ACE).

## Congressional Trade Staff Offers Cautious Assessment of 2004 Trade Legislation

### SUMMARY

On February 5, 2004, the Washington International Trade Association (WITA) hosted its annual "Congressional Trade Update." The event featured House and Senate trade counsels from the Democratic and Republican parties. Staffers agreed that the 2004 election cycle will complicate passage of trade legislation. Staffers also agreed that passage of the Central American Free Trade Agreement (CAFTA) and the US-Australia Free Trade Agreement is increasingly unlikely in 2004, although it is possible that Congress will consider FSC/ETI legislation.

Republican staffers focused their remarks on using trade policies to promote job creation. Democratic staffers focused on developing a policy for selecting bilateral trade partners, and the need to protect core labor and environment standards.

### ANALYSIS

The WITA Congressional Trade Update featured trade staff from both the House and Senate. We review here the key points raised by staffers.

**Angela Ellard**, Staff Director and Council (Republican), House Ways and Means Committee, commented on the following:

- **CAFTA:** Ellard expressed her satisfaction with the recent publication of the CAFTA text on the website of the US Trade Representative (USTR). With respect to the agreement itself, she suggested that the textile and sugar provisions are still of concern to House Republicans.
- **US-Australia FTA:** Ellard expressed concerns over any one sector being excluded from the US-Australia FTA. Such exclusions would create a bad precedent and may spark protectionism in the US.
- **FSC/ETI and Byrd Amendment:** The Extraterritorial Income Exclusion Act (FSC), along with the Byrd Amendment should be repealed quickly (*Please see related report this edition*). In repealing FSC, consideration must be given to a policy that not only brings the US into compliance with the WTO, but a policy that promotes job creation for US manufacturing.
- **US-China Relations:** Protectionist sentiments against China are likely to continue, with greater demands for enforcement of US trade laws.
- **Miscellaneous Trade Act:** The Senate should pass the Miscellaneous Trade Act, which the House has passed on three separate occasions and, furthermore, the Senate should not attempt to attach irrelevant riders to the bill.

**Tim Reif**, Chief Trade Counsel (Democrat), House Ways and Means Committee made the following observations:

- **Selection of FTA Partners:** The Bush Administration needs to develop a transparent policy for selecting free trade partners. He stressed that the process of selecting potential free trade partners must be based on commercial interests rather than Cold War-era foreign policy calculations.
- **Bilateral FTAs and the WTO:** Reif insisted the US must avoid violating Article 24 of the GATT with respect to its regional agreements. Article 24 specifies that, for a regional or bilateral FTA to be WTO compliant, an FTA must be comprehensive in scope. Reif suggested that several of the EU's FTAs were not in compliance with Article 24. To date, no country has been found to be in violation of Article 24.
- **US-China Relations:** There is an urgent need to confront discrimination by China in the high tech sectors.

**Timothy Punke**, International Trade Counsel (Democrat), Senate Finance Committee, stated that Senator Baucus remains committed to pursuing trade legislation aimed at discouraging the outsourcing of jobs from the US. Punke emphasized the need to adopt legislation that makes US manufacturers more competitive by reducing the costs of R&D and health care. He also expressed the belief that the Trade Adjustment Assistance program should be expanded to include workers in service industries. On other trade agreements/legislation Timothy stated:

- **MEFTA:** The Senate Finance Committee will hold a hearing on a Middle East FTA in March 2004. Consideration of a trade preference program for the Middle East may be tied with passage of the African Growth and Opportunities Act (AGOA).
- **CAFTA:** CAFTA may not be brought to Congress this year and the current version of CAFTA may not comply with the requirements of the Trade Act of 2002. In particular, CAFTA lacks an appellate mechanism for investor-state disputes and lacks objective monitoring of labor and environment issues.
- **Cuba Travel Ban:** Pressure to "de-fund" the enforcement of the travel ban to Cuba will continue in the FY 2005 appropriations process.

**Everett Eissenstat**, Chief International Trade Council (Republican), Senate Finance Committee, made the following observations:

- **FSC/ETI:** Senate action on repeal of the Extraterritorial Income Exclusion Act (FSC) is likely this year. Obtaining floor time for debate will be the biggest obstacle. Retaliation by the European Union would make passage of the repeal more difficult. The repeal must include a package to assist the manufacturing sector (*Please see related report this edition*).
- **Agriculture:** Confronting obstacles to agricultural exports, such as Mexico's tax on high fructose corn syrup (HFCS) remains a top priority for Senator Grassley (R-Iowa).



## ***OUTLOOK***

All four staffers expressed support for USTR's attempt to jump-start the WTO Doha Round. They agreed that further trade liberalization through the WTO would bring far greater benefit than any one bilateral FTA.

A compressed congressional calendar will hinder efforts to pass the long list of trade related bills. Congressional staffers indicated that it is possible Congress could approve FSC/ETI legislation, but other trade related legislation will be difficult to pass.

## **NHTSA Extends Automotive Fuel Economy Manufacturing Incentives for Alternative Fueled Vehicles**

### ***SUMMARY***

On February 19, 2004, the National Highway Traffic Safety Administration (NHTSA) published a final rule, extending the incentive created by the Alternative Motor Fuels Act of 1988 to encourage the continued production of motor vehicles capable of operating on alternative fuels for four additional years.

The amendments made in the final rule are effective October 1, 2004. Any petitions for reconsideration must be received by NHTSA no later than April 5, 2004.

### ***ANALYSIS***

On February 19, 2004, the National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT), published a final rule in the Federal Register (69 FR 7689), extending the incentive created by the Alternative Motor Fuels Act of 1988 to encourage the continued production of motor vehicles capable of operating on alternative fuels.

The Act provides that motor vehicles subject to corporate average fuel economy (CAFE) standards will receive special consideration in the form of a specified credit toward the calculation of a manufacturer's CAFE performance if they are capable of operating on alternative fuels.

The final rule extends the incentive for four additional years.

### ***OUTLOOK***

The amendments made in the final rule are effective October 1, 2004. Any petitions for reconsideration must be received by NHTSA no later than April 5, 2004.

## **Free Trade Agreements**

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### **US Concludes FTA With Australia; President Notifies Congress of Administration's Intention to Enter into FTA**

#### ***SUMMARY***

On February 8, 2004 the United States Trade Representative (USTR) announced that it had concluded Free Trade Agreement (FTA) negotiations with Australia. With more than 99 percent of US manufactured goods that will become duty-free immediately, the FTA provides for the most significant reduction of industrial tariffs ever achieved in a US FTA.

President Bush officially notified Congress of the Administration's intent to enter into the FTA on February 13, 2004.

USTR will release the draft text of the US-Australia FTA "in the near future".

#### ***ANALYSIS***

##### **I. US Concludes FTA with Australia**

On February 8, 2004, the United States Trade Representative (USTR) announced that it had concluded Free Trade Agreement (FTA) negotiations with Australia. The agreement was to have been concluded by the end of 2003, but negotiations continued into January 2004 when negotiators failed to reach agreement on several contentious issues including market access for agricultural goods, such as beef, dairy and sugar, and Australia's Pharmaceutical Benefits Scheme (PBS) (*Please see W&C December 2003 report*).

The FTA provides that more than 99 percent of US manufactured goods will become duty-free immediately upon entry into force of the Agreement. This is the most significant reduction of industrial tariffs ever achieved in a US FTA, and could result in more than \$ 2 billion per year in increased US exports of manufactured goods.

The FTA contains significant benefits for, among others, the following key US manufacturing sectors:

- Autos and auto parts;
- Chemicals, plastics and soda ash;
- Information technology products;
- Electrical equipment and appliances;
- Non-electrical machinery;
- Fabricated metal products;
- Construction equipment;
- Paper and wood products;

- Furniture and fixtures; and
- Medical and scientific equipment.

## **II. President Notifies Congress of Administration's Intention to Enter into FTA with Australia**

On February 13, 2004 President Bush officially notified Congress of the Administration's intent to enter into an FTA with Australia, and subsequently published that notification in the Federal Register on February 18 (69 FR 7675).

The notification is a required step in order to have to meet the requirements of the Trade Act of 2002 (Trade Promotion Authority).

### ***OUTLOOK***

USTR has announced that the draft text of the agreement will be released "in the near future".

According to USTR, the Administration intends to submit the FTA to Congress before the US elections in November 2004. Congressional leaders, however, have expressed skepticism over considering any FTAs prior to the completion of the 2004 election cycle.

## **US and Costa Rica Conclude Negotiations; Costa Rica to Join CAFTA; USTR Releases Draft Text of CAFTA**

### ***SUMMARY***

On January 25, 2004, the United States Trade Representative (USTR) announced that the US and Costa Rica concluded negotiations to complete Costa Rica's participation in the US-Central America Free Trade Agreement (CAFTA). During a final round of negotiations from January 19-25, 2004, the US and Costa Rica resolved outstanding issues in areas such as market access for agriculture, textiles and apparel, and services.

USTR released the draft text of the CAFTA on January 28, 2004. The draft text of the agreement is available at [www.ustr.gov](http://www.ustr.gov)

The US Administration also seeks to include (or "dock") the US-Dominican Republic FTA into the CAFTA by the end of March 2004. USTR hopes to submit the full CAFTA to Congress by early July 2004.

### ***ANALYSIS***

#### **I. US and Costa Rica Conclude Negotiations; Costa Rica to Join CAFTA**

On January 25, 2004, the United States Trade Representative (USTR) announced that the US and Costa Rica concluded negotiations to complete Costa Rica's participation in the US-Central America Free Trade Agreement (CAFTA). The US concluded CAFTA negotiations with El Salvador, Guatemala, Honduras, and Nicaragua on December 17, 2003, but negotiations between the US and Costa Rica continued because Costa Rica needed more time to address sensitive issues such as its monopoly in the telecommunications and the insurance sectors.

During a final round of negotiations from January 19-25, 2004 in Washington, the US and Costa Rica resolved outstanding issues in areas such as market access for agriculture, textiles and apparel, and services. For example, Costa Rica made the following specific commitments in sensitive services sectors:

- Gradually open its telecommunications market in the key areas of (i) private network services, (ii) internet services, and (iii) wireless services;
- Establish a regulatory framework to help foster effective market access in the telecoms sector; and
- Fully open its insurance market to competition by January 1, 2011.

#### **II. USTR Releases Draft Text of CAFTA, Seeks to Include Dominican Republic**

USTR released the draft text of the CAFTA on January 28, 2004. The draft text of the agreement is available at [www.ustr.gov](http://www.ustr.gov)

The US Administration also seeks to include (or "dock") the US-Dominican Republic FTA into the CAFTA. A first round of negotiations for this additional FTA took place from January 12-16, 2004. The US and the Dominican Republic will hold three negotiating rounds, and hope to reach agreement by the end of March 2004.

## ***OUTLOOK***

USTR expects to notify formally Congress of its intent to sign the agreement sometime "early in 2004", as required under the Trade Act of 2002, and will also continue to consult with Congress on steps to pass legislation which would implement the agreement. USTR hopes to submit the full CAFTA, with the Dominican Republic included, to Congress by early July 2004.

Sources indicate that CAFTA awaits a difficult vote in Congress due to growing resistance to trade liberalization in Congress. Also, the CAFTA contains many contentious issues, including labor provisions, textiles quotas, agricultural market access, and other issues.

## **USTR Notifies Congress of Its Intent to Negotiate FTA with Thailand; Announces Hearing and Requests Comments on US-Andean FTA**

### ***SUMMARY***

We want to alert you to the following Free Trade Agreement (FTA) developments:

- On February 12, 2004, the United States Trade Representative (USTR) notified Congress of its intention to negotiate an FTA with Thailand. Under Trade Promotion Authority (TPA), negotiations may now begin in 90 days.
- On February 17, 2004, USTR announced that it will hold a public hearing on the US-Andean FTA ("AFTA") on March 17, 2004. USTR also requested for comments, which are due by March 30, 2004.

### ***ANALYSIS***

#### **I. USTR Notifies Congress of Its Intent to Negotiate FTA with Thailand**

On February 12, 2004 the United States Trade Representative (USTR) notified the House and Senate of its intention to negotiate a Free Trade Agreement (FTA) with Thailand. The notification follows the announcement in October 2003 at the Asia-Pacific Economic Cooperation (APEC) conference in Bangkok of US plans to pursue FTA negotiations with Thailand (*Please see W&C November 2003 report*).

In transmitting the notification, USTR Robert Zoellick stated "[w]e believe the United States has much to gain in pursuing a negotiation with Thailand. Thailand already is our 18th largest trading partner with \$19.7 billion in total trade during 2002. The increased access to Thailand's market that an FTA would provide would further boost trade in a wide range of both goods and services, enhancing employment opportunities in both countries."

Negotiations are expected to cover a wide range of sensitive issues for both sides, including agricultural market access, investment rights and intellectual property protection.

#### **II. USTR Announces Hearing and Requests Comments on US-Andean FTA**

On February 17, 2004, USTR published a notice in the Federal Register (69 FR 7532), announcing that it intends to initiate negotiations on an FTA with Andean countries Colombia, Peru, Ecuador, and Bolivia. The US and the Andean first decided to negotiate an FTA on November 18, 2003 at the Free Trade Area of the Americas (FTAA) Ministerial in Miami (*Please see W&C December 2003 report*).

USTR will also convene a public hearing and seek public comments to assist in formulating its negotiating objectives for the proposed US-Andean FTA ("AFTA") and to provide advice on how specific goods and services and other matters should be treated under the agreement.

## ***OUTLOOK***

Under Trade Promotion Authority (TPA), negotiations with Thailand may now begin in 90 days. Congress will likely hold hearings in the near future with industry and government representatives to assess the benefits of an FTA.

The hearing on the FTA with the Andean countries will take place in Washington DC on March 17, 2004, and will continue on subsequent days if necessary. Parties interested in testifying at the hearing must submit written notification and their testimony by March 10, 2004.

Written comments on the US-Andean FTA are due by March 30, 2004.



## **US and Bahrain Launch First Round of FTA Negotiations; US Signs TIFAs With Kuwait and Yemen**

### ***SUMMARY***

On January 26, 2004, the United States Trade Representative (USTR) announced that the US and Bahrain had launched a first round of negotiations on a Free Trade Agreement (FTA). The goal is to complete the FTA by the end of the year.

In a related development, On February 6, 2004, the United States on February 6, 2004 signed Trade and Investment Framework Agreements (TIFAs) with Kuwait and Yemen.

The FTA with Bahrain and the TIFAs with Kuwait and Yemen are part of President Bush's initiative to advance economic reforms and transparency in the Middle East and to establish a Middle East Free Trade Area (MEFTA) by 2013.

### ***ANALYSIS***

#### **I. US and Bahrain Launch First Round of FTA Negotiations**

On January 26, 2004, the United States Trade Representative (USTR) announced that the US and Bahrain had launched a first round of negotiations on a Free Trade Agreement (FTA) in Manama, Bahrain. The FTA will build on the Trade and Investment Framework Agreement (TIFA) that the US and Bahrain concluded on June 18, 2002.

Assistant USTR for Europe and the Mediterranean Catherine Novelli will lead the US negotiating team for the negotiations with Bahrain.

#### **II. US Signs TIFAs With Kuwait and Yemen**

On February 6, 2004, the United States signed TIFAs with Kuwait and Yemen. Each TIFA creates a Joint Council on Trade and Investment, in which both parties will cooperate and coordinate to enhance and liberalize trade and investment at the bilateral, regional, and multilateral levels, including their efforts to advance the Doha Development Agenda (DDA).

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

### ***OUTLOOK***

The goal is to complete the US-Bahrain FTA by the end of the year.

The FTA with Bahrain and the TIFAs with Kuwait and Yemen are part of President Bush's initiative to advance economic reforms and transparency in the Middle East and to establish a Middle East Free Trade Area (MEFTA) by 2013.

President Bush announced the plan to establish a MEFTA on May 9, 2003. To realize this, the Administration envisions a "building blocks" approach of using the FTAs the US already has in place with Israel and Jordan and is negotiating with Morocco --as anchors to negotiate FTAs with other Middle East countries. At some point before 2013, the US intends to consolidate these FTAs to form the US-Middle East Free Trade Area.

## Customs

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### COAC Holds First Meeting of 2004; Receives Updates on Key CBP Programs

#### *SUMMARY*

On February 6, 2004, the Departmental Advisory Committee on Commercial Operations (COAC) of the Bureau of Customs and Border Protection (CBP) held its first meeting of 2004. Department of Homeland Security (DHS) Undersecretary Asa Hutchinson briefed COAC on the status of the President's FY2005 budget request. In addition, COAC members and CBP representatives discussed CBP organizational changes, and the status of current major CBP programs and initiatives.

Discussion focused on the enforcement of the Bioterrorism Act (BTA) and the inspection/validation process for members of the Customs-Trade Partnership Against Terrorism (C-TPAT). COAC members responded positively to the phased enforcement of the BTA. However, COAC expressed concerns regarding the lack of statistical data on the C-TPAT program. As a result, members were reluctant to endorse DHS suggestions for more robust C-TPAT validation processes.

#### *ANALYSIS*

On February 6, 2004, the Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection (COAC) held the first meeting of its ninth term.

The speakers included:

- Asa Hutchinson, Undersecretary for Border and Transportation Security, Department of Homeland Security;
- C. Stewart Verdery, Assistant Secretary for Border and Transportation Security Policy and Planning, Department of Homeland Security;
- Timothy E. Skud, Deputy Assistant Secretary of the Treasury;
- Douglas Browning, Deputy Commissioner, Bureau of Customs and Border Protection;
- Robert E. Perez, Director of the Customs-Trade Partnership Against Terrorism, Office of Field Operations, Bureau of Customs and Border Protection;

### Under Secretary Hutchinson Reviews President's FY2005 Budget Submission

Secretary Hutchinson reviewed the President's FY2005 budget and major CBP programs and initiatives.

- **Budget:** The Administration's FY2005 budget seeks a 9% increase in spending on CBP programs. The budget includes increases for C-TPAT

(\$15 million), the Container Security Initiative (CSI) (\$25 million), and the customs automated targeting system (\$20 million).

- **Cargo Inspection:** Targeted inspection of cargo remains the top priority of CBP. Secretary Hutchinson conceded that inspecting all cargo inbound to the US was impossible, but that inspecting 100% of the high risk cargo was essential. Hutchinson called on COAC members to work with CBP to develop more robust validation procedures for C-TPAT members.

CBP intends to conclude its work on establishing standards for container locks and seals. C-TPAT members will be required to meet these standards.

- **Container Security:** CBP will issue standards with respect to container lock and seals. The standards, which were supposed to be released on January 1, 2004, will be binding on C-TPAT members.

Hutchinson also announced the creation of a container security working group.

- **CBP Regional Structure:** DHS is formally considering a regional structure. Under the proposal, 7 – 10 regions would be created within the US, each headed by a regional director. The regional directors would serve as liaisons with local officials, incident managers, and would oversee day-to-day operations. Secretary Hutchinson urged COAC to consider the proposal and assured members that policy formulation would remain centralized within CBP.

COAC members expressed concerns over the lack of C-TPAT statistical performance data, and reliance on anecdotal evidence of success. Members were hesitant to support more robust validation procedures before evaluating the effectiveness of current procedures. Deputy Commissioner Browning countered that, in terms of seizures and prevention of illegal entry, enhanced border protection was being accomplished. However, Browning also acknowledged the need to refine CBP measurements.

### **C-TPAT Membership Grows; CBP Adds Staff to Address Backlog of Validations**

Director Perez stated that:

- C-TPAT has over 5000 members.
- CBP is developing a web-based database so that C-TPAT members can determine what other companies are also C-TPAT members. Participation in the database will be strictly voluntary, with the system expected to be online in late March 2004.
- CBP will hire an additional 60-80 supply chain officers to conduct validations of members' security plans. CBP aims to complete 300 of the over 700 pending applications by 2005.

COAC members expressed a desire to make recommendations, and urged CBP to take a global approach to supply chain management

### **World Customs Organization Scraps Task Force on Security**

Brenden O'Hearn, CBP Policy and Programs Division, reported that the World Customs Organization (WCO) favors replacing the Task Force on Security with a high level steering group. The steering group, which will comprise fewer members, is expected to function more coherently than the task force. The WCO will consider the steering group at its next meeting in April 2004.

### **COAC Members Concerned About Lack of ACS Resources**

COAC raised concerns about the lack of resources devoted to maintaining, updating and upgrading the Automated Customs System (ACS). Attention and resources have been shifted away from ACS to the Automated Commercial Environment (ACE). CBP officials stated that contractors were maintaining ACS, and that changes in ACS would require similar changes in ACE, expanding the cost of both. In addition, CBP cited a lack of resources to upgrade ACS, stating that development of ACE was a higher priority.

### **Phased Enforcement of BTA Continues; COAC Expresses Implementation Concerns**

CBP updated COAC on the phased-in enforcement of BTA. Until March 12, 2004, CBP will not issue penalties for failure to notify or improper notifications of goods covered under BTA. From March 13, 2004 – May 12, 2004, CBP will issue civil penalties for shipments that are not notified, and after May 13, 2004, will hold non-notified shipments at their points of entry. Full enforcement of BTA will commence on August 13, 2004. CBP also informed COAC that they are working to facilitate the amendment of prior notice declarations before a product arrives at its point of entry.

COAC praised CBP for its work in handling the implementation of BTA, but expressed concerns on several implementation issues, including:

- The BTA requirement that goods be inspected at their port of arrival, rather than their point of entry;
- The lack of a *de minimis* in the BTA;
- The inability of the Food and Drug Administration (FDA) website to properly handle the large amount of traffic being generated by the BTA; and
- The inability of shippers to file more than five days prior to arrival of a product covered under BTA.

### ***OUTLOOK***

COAC encouraged CBP to focus on outreach initiatives to help the trade community understand its obligations with respect to CBP programs and initiatives. The Committee also encouraged CBP to seek comments from the trade community on an ongoing basis, rather than at COAC meetings.

The next COAC meeting will take place in April 2004.

## **TSA Announces Issuance of All-Cargo International Security Procedures for Foreign Air Carriers; CBP Extends General Program Test Regarding Post Entry Amendment Processing**

### *SUMMARY*

We want to alert you to the following Customs developments:

- On January 27, 2004, the Transportation Security Administration (TSA) announced the issuance of All-Cargo International Security Procedures (ACISP) for foreign air carriers.
- On February 6, 2004, the Bureau of Customs and Border Protection (CBP) announced an extension of the general program test regarding post entry amendment processing. The test is extended until December 31, 2004.

### *ANALYSIS*

#### **I. TSA Announces Issuance of All-Cargo International Security Procedures for Foreign Air Carriers**

On January 27, 2004, the Transportation Security Administration (TSA), Department of Homeland Security (DHS), announced in the Federal Register (69 FR 3939) that on November 17, 2003 they issued All-Cargo International Security Procedures (ACISP) to all foreign air carriers that perform all-cargo operations to, from, within, or over flying the US that are not otherwise regulated under title 49 of the Code of Federal Regulations part 1546, Foreign Air Carrier Security.

To respond to vulnerabilities in air cargo security, the ACISP requires foreign air carriers to:

- conduct random inspections of certain air cargo;
- verify the identities of persons with access to these flights;
- ensure the security of the aircraft; and
- have in place procedures to respond to certain threats.

#### **II. CBP Extends General Program Test Regarding Post Entry Amendment Processing**

On February 6, 2004, the Bureau of Customs and Border Protection (CBP) published a notice in the Federal Register (69 FR 5860), announcing an extension of the general program test regarding post entry amendment processing.

The post entry amendment processing test was first announced on November 28, 2000 (Federal Register Notice 65 FR 70872). The test allows importers to amend formal entry summaries prior to liquidation by filing with CBP either an individual amendment letter upon

discovery of an error or a quarterly tracking report covering any errors that occurred during the quarter.

### ***OUTLOOK***

The general program test regarding post entry amendment processing is extended until December 31, 2004.

## **Petitions and Investigations**

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### **USTR Requests ITC Regarding Possible Modifications to GSP Program**

#### ***SUMMARY***

The United States Trade Representative (USTR) recently requested that the International Trade Commission (ITC) conduct an investigation regarding the probable economic effect on US industries producing like or directly competitive articles and on consumers of the elimination of US import duties for all beneficiary developing countries under the Generalized System of Preferences (GSP) program.

#### ***ANALYSIS***

**Docket No:** 2351

**Document Type:** 501 and 131 Requests (Fact-finding Investigation)

**Filed By:** Josette Sheeran Shiner

**Firm/Org:** United States Trade Representative

**Behalf Of:** United States Trade Representative

**Date Received:** February 13, 2004

**Confidential:** No

**Commodity:** GSP

**Country:** None

**Description:** Letter to Deanna Tanner Okun, Chairman, USITC; requesting that the Commission conduct an investigation under section 503 (a)(1)(A), 503(e) and 131(a) of the 1974 Act as to the probable economic effect on US Industries producing like or directly competitive articles and on consumers of the elimination of US import duties for all beneficiary developing countries under the GSP.

**Status:** Pending Institution



## GAO Reports

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### GAO Report Analyzes FTA Selection Criteria; Criticizes FTA Resource Management

#### *SUMMARY*

On January 12, 2004, the United States General Accounting Office (GAO) released a report entitled "Intensifying Free Trade Negotiating Agenda Calls for Better Allocation of Staff and Resources." Senator Max Baucus (D-Montana) and Representative Cal Dooley (D-California) requested the GAO review on how the US selects FTA partners, particularly the interagency process and the administration's resource allocation.

The GAO report concludes that the ambitious pace of FTA negotiations will require better management of resources across diverse trade agencies. The GAO recommends that USTR work with other key trade agencies to adopt more systematic data and interagency resource planning.

The GAO reports that the factors used to select FTA partners often reflect U.S. strategic, foreign policy, and foreign economic development goals. Senator Baucus and Representative Dooley in their responses to the GAO report highlighted these findings. They urged the administration to give more consideration to commercial interests when selecting FTA partners.

#### *ANALYSIS*

##### **I. GAO Report Analyzes FTA Selection Process**

The GAO report on the U.S. selection of FTA partners outlines the selection criteria, the roles of key trade agencies, and the distribution of resources. We highlight the findings below.

##### *Selection Criteria Change in the Last Two Years*

Senior USTR leadership has made the key decisions on potential FTA partners in 2002. USTR employed 13 factors in assessing FTA candidates, including:

- Business and agricultural interests
- Effects on certain sectors and products (e.g. textiles and sugar)
- The potential partner's commitment to an open market economy
- Support from civil society (e.g. labor and environmental groups)
- The potential partner's cooperation in security and foreign policy
- U.S. strategic objective of negotiating FTAs in each major world region
- Demands placed on USTR resources

In May 2003, as a result of an inter-agency process headed by the National Security Council (NSC), six factors were identified as critical to FTA partner selection:

- The potential partner's political will, trade capabilities, and rule of law systems
- The FTA's economic and commercial benefit to the U.S.
- The potential partner's overall support for U.S. trade liberalization strategy
- The potential partner's compatibility with U.S. interests, including foreign policy
- Support from Congress, business groups, and civil society
- Demands placed on USTR resources

***Foreign Policy Dominates Administration's Competitive Liberalization Strategy***

GAO interviews with key officials revealed that the FTA selections in 2002-2003—Australia, Bahrain, Central America, Dominican Republic, Morocco, and Southern Africa—reflected U.S. trade strategy, foreign policy, and foreign economic goals. The GAO report suggests that the administration increasingly prioritizes foreign policy concerns over commercial interests. The Administration seeks to liberalize trade bilaterally, regionally, and multilaterally through its policy of “competitive liberalization.”

***Formalized Interagency Process Intends to Make Selection Process More Inclusive***

In May 2003, the NSC issued guidelines on assessing potential FTA partners. The guidelines aim to make the interagency process more inclusive.

- USTR initiates the formal selection process, which includes assessments of potential partners by the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC). Delegates to the TPSC/TPRG represent the U.S. Department of State, U.S. Department of Treasury, U.S. Department of Commerce, U.S. Department of Agriculture, the NSC/NEC, and other agencies.
- Recommendations then move to the NSC/NEC where deputies and principals from the aforementioned agencies discuss and provide recommendation to the President.
- When the President selects an FTA partner, he must notify Congress 90 days prior to the start date of negotiations.

The new interagency process was first used in mid-2003 in assessing the Dominican Republic as a potential FTA partner. Agency officials seemed satisfied with their increased involvement in the process.

USTR officials also consulted with Congress and the private sector, though these groups are not formally involved in the selection process.

### ***Ambitious FTA Agenda Requires Better Resource Allocation***

USTR and cooperating agencies have pursued an increasing number of FTA negotiations without proper consideration of resource trade-offs. The interagency process fails to specify staffing needs and other cost estimates created by FTA partner selections.

USTR officials were unable to provide clear, formal data on resources needed for each FTA and resources available. USTR officials have no intentions of tracking the time staff spent working on FTAs. Rather, USTR makes resource decisions on an ad-hoc basis; the FTA process requires staff and financial commitments before, during, and after negotiations.

FTA negotiations are resource intensive, requiring significant contributions by USTR, Agriculture, Commerce, State, and Treasury. For example, each of the six FTAs under negotiation in 2003 involved 11 percent of USTR's 209 full time staff. In addition, FTA travel is estimated to constitute 42 percent of USTR's total travel costs in FY2004. USTR also requests staff and resources from other agencies, complicating their financial planning.

## **II. Members of Congress and USTR Respond to GAO Findings**

In statements made following the release of the GAO report, Senator Baucus and Representative Dooley reaffirmed that the U.S. must move ahead with an aggressive trade agenda, principally through the WTO and the FTAA. The GAO report confirmed Senator Baucus's belief that the current selection process for FTA partners is flawed; the criteria are too broad, strategic and foreign policy goals dominate, and the process lacks sufficient public participation. Senator Dooley emphasized USTR's need for additional resources to meet the current trade agenda.

In his response to the report, USTR Robert Zoellick emphasized the importance of the administration's "competitive liberalization" strategy and the strategic role of FTAs within this strategy. He acknowledged that increasing demands will require significant restructuring of USTR. However, Zoellick disagreed with GAO's finding on resource allocation, suggesting that the problem is not the *allocation*, but rather the *amount* of available resources.

### ***OUTLOOK***

The new interagency process has created greater transparency and initiated wider involvement in the selection process for FTA partners.

The ambitious FTA agenda will intensify demand on USTR's limited resources. Analysts question whether the system can support an increasingly aggressive trade agenda. The failure of the Cancun negotiations suggests that the US will increase the number of bilateral negotiations if the Bush administration continues to pursue its competitive liberalization strategy. In FY2004, USTR received an increase in its annual budget, though the President's FY2005 budget would cut \$2 million from USTR.

The GAO insists that the resource problems lie in the planning and management. USTR maintains that the resource problems result from the lack of available resources.

Whether resource strains are due to allocation, amount, or a combination of both, USTR will likely have difficulty pursuing the ambitious U.S. trade agenda for 2004.

## GAO Concludes Commerce Needs to Improve Post-Shipment Verification Checks of Dual-Use Technology Exports

### SUMMARY

On February 11, 2004, the General Accounting Office (“GAO”) released a report on the post-shipment verification (“PSV”) checks that the US Department of Commerce (“Commerce”) conducts to ensure that dual-use technologies arrive at their destination and are used for the purpose stated in the export license.

The report identifies several weaknesses that reduce the effectiveness of the PSV checks, and recommends that Commerce:

- Improve the technical training for enforcement personnel conducting the PSV checks;
- Ensure that enforcement personnel conducting PSV checks assess compliance with license conditions; and
- Require that exporters inform the end user in writing of the license conditions.

The full report is available at [www.gao.gov](http://www.gao.gov).

### ANALYSIS

On February 11, 2004, the GAO released a report entitled “Export Controls: Post-Shipment Verification Provides Limited Assurance That Dual-Use Items Are Being Properly Used” (GAO-04-357). The report focuses on PSV checks used by the Commerce to ensure that dual-use technologies arrive at their destination and are used for the purpose stated in the export license.

Dual-use technologies are technologies that have both commercial uses and can be used to develop or produce advanced conventional weapons or weapons of mass destruction. The US seeks to control the export of these technologies to prevent countries of concern, such as China or India, from using them to enhance their military capabilities. Commerce is responsible for licensing dual-use exports, and relies on PSV checks to ensure that the exports are not diverted or misused.

In the report, the GAO:

- Assesses the number of dual-use export licenses approved and subject to post-shipment verification; and
- Evaluates how the PSV process ensures that sensitive exports are used as intended.

We highlight the conclusions of the report below:

#### ***Several Weaknesses Reduce the Effectiveness of the PSV Checks***

The report concluded that the following three key weaknesses reduce the effectiveness of the PSV checks:

- PSV checks do not confirm compliance with export license conditions because US officials frequently do not check license conditions and often lack the technical training to assess compliance. Hence, end users may not be aware of the license conditions by which to abide.
- Some countries of concern, most notably China, limit US access to facilities where dual-use items are shipped, making it difficult to conduct a PSV.
- PSV results have only a limited impact on future licensing decisions. Therefore, companies receiving an unfavorable PSV can still receive an export license.

***Commerce Needs to Improve Technical Training, Assessment of Compliance With License Conditions and Information About License Conditions***

In order to improve the effectiveness of the PSV checks, the report recommends that Commerce:

- Improve the technical training for enforcement personnel conducting the PSV checks;
- Ensure that enforcement personnel conducting PSV checks assess compliance with license conditions; and
- Require that the exporter inform the end user in writing of the license conditions.

***OUTLOOK***

Commerce generally agreed with the GAO's findings and has already taken steps to implement GAO recommendations.

Commerce officials, however, indicated that they thought the GAO i) overemphasized the use of PSVs as a way to ensure compliance with license conditions and ii) underestimated the value of PSVs for informing future licensing decisions.

**US-EU**

**EU and US to Re-launch Transatlantic Dialogue; Conclude Agreement on Container Security Cooperation**

***SUMMARY***

The EU and US Chambers of Commerce have recently launched an initiative to revive the Transatlantic Business Dialogue. Their efforts were supported by the US Commerce Secretary Donald Evans who announced in Davos the US government's

commitment to the creation of barrier-free trade between the two largest economies in the world.

On a separate note, the European Commission has just published the final version of the Agreement with the US on Customs Cooperation on Container Security. This agreement will expand the existing Customs Cooperation Agreement and enable US customs authorities to operate in EU ports.

### *ANALYSIS*

#### **Eurochambers and AmCham Will Work Together to Revive the Transatlantic Dialogue**

The Presidents of EU and American Chambers of Commerce – Eurochambers and AmCham - confirmed last week that they intend to step up transatlantic dialogue and business relations. At a meeting in Vienna they discussed strategies in several fields of common interest, including steps against counterfeiting. The Presidents also discussed ways of ensuring a balance between the need for security measures in the US and trade facilitation. Eurochambers and the AmCham will work together on a joint event on the sideline of the EU – U.S. Summit to take place by the end of June 2004. They will also organize meetings between business representatives and trade and customs authorities.

The revival of the transatlantic business dialogue was also in the spotlight during the annual gathering of the World Economic Forum in Davos. Donald Evans, the US Commerce Secretary, announced that the US is fully committed to creating a barrier-free transatlantic marketplace. Evans outlined a three-step strategy to realize that goal:

- working to strengthen intellectual property protection, particularly by stepping up the fight against counterfeiting;
- attempting to bring about regulatory convergence in an effort to avoid duplication; and
- dealing with security issues that potentially affect trade on both sides of the Atlantic.

#### **EU and the US Conclude Agreement on Container Security Cooperation**

On January 22, 2004 the Commission published a proposal for a Council of Ministers Decision on the signature and conclusion of the Agreement with the US on customs cooperation on Container Security<sup>1</sup>. The new Agreement will be part of the existing EU – US Customs Cooperation Agreement. It will contain coordination mechanisms for further strengthening container security cooperation between customs authorities on both sides of the Atlantic. The agreement authorizes Member States to (i) expand the Container Security Initiative to all Community ports, through arrangements with the US government, or (ii) maintain existing customs declarations. It will also establish consultation and information procedures between EU Member States and the US for further arrangements on matters covered by the existing EU – U.S. Customs Cooperation Agreement.

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<sup>1</sup> COM (2004) 36 Final

## U.S.-LATIN AMERICA

### FTAA

#### **Co-Chairs Suspend FTAA Puebla TNC as Positions Harden; Attempt to Resume Discussions in March**

##### *SUMMARY*

On February 6, the FTAA Co-Chairs, the US and Brazil, announced that delegations at the FTAA Puebla Trade Negotiations Committee (“TNC”) meeting need more time to consult with their capitols and other delegations. Therefore, the co-chairs decided to recess and reconvene, tentatively, during the first week of March.

The Puebla TNC meeting aimed to develop guidance to the FTAA negotiating groups in accordance with the new negotiating structure mandated by the Miami Ministerial.

A USTR official noted that the delegations in Puebla were unable to “strike the right balance.” The official contrasted the position of the United States and 13 other countries, which seemed willing to ratchet down commitments to build a common agreement, as opposed to the position of Mercosur, which refuses to lower expectations on agriculture and non-agricultural market access.

##### *ANALYSIS*

#### **I. TNC Aims to Provide Guidance to Negotiating Groups**

Ministers at the Miami Ministerial decided to alter the structure of the FTAA negotiations so that all FTAA countries would negotiate common commitments, but countries could also opt to negotiate more ambitious commitments or plurilateral agreements in certain areas. This dual-track approach signaled a dramatic shift from the original single undertaking approach. (*Please see W&C December 2003 report*). The Puebla TNC was intended as the first meeting after Miami to explore approaches to implement the new, and more complex structure.

Vice Ministers met in Puebla to provide guidance to achieving common objectives in each of the negotiating areas. Vice-Ministers attempted to set some basic procedures for transparency and organization, but not define upper levels of commitments.

After a week of intensive negotiations, the co-chairs decided to suspend the Puebla meeting to allow delegations to consult with their capitals and other delegations. Reportedly, positions hardened on negotiating approaches as Mercosur countries disagreed with the United States and its supporters, on possible linkages between commitments and obligations. Mercosur countries have argued that the United States would have countries that are not prepared to negotiate more ambitious commitments to have diminished market access, something they consider an unbalanced approach as the United States has already left out of the negotiation table certain issues that are critical for Mercosur countries, such as agricultural subsidies and antidumping. They also criticize the U.S. insistence that Mercosur countries take on ambitious commitments with regard to issues that are sensitive for them, like services and intellectual property, but not being prepared to have the same ambition on other issues like agricultural subsidies and antidumping.



The TNC is tentatively set to resume during the first week of March, in Puebla.

## II. USTR Official Discusses Countries' Positions for Puebla

On February 7, a USTR official, speaking on background, held a teleconference on the Puebla meeting. We summarize the official's comments below.

### A. Fourteen FTAA Countries Agree to Negotiate Plurilateral

The United States consulted with Chile, Canada, Costa Rica and Mexico prior to the Puebla meeting and agreed on a common set of objectives to propose in Puebla. The USTR official noted that countries recognized that they must lower expectations to agree on a common set of objectives and, therefore, the document does not reflect the high level of ambition the US originally sought.

The United States worked on a single paper as a proposal during the Puebla meeting with the following 13 countries: Canada, Mexico, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, the Dominican Republic, Colombia, Ecuador, Peru and Chile. These countries have agreed to negotiate a common agreement that will cover, at a minimum, market access for goods and services trade. These countries will also pursue plurilateral agreements, including for government procurement and investment. Countries intend to begin negotiations after the TNC meeting concludes.

The United States aims to negotiate the common agreement and the plurilaterals simultaneously.

### B. Mercosur Refuses to Lower Expectations in Agriculture and Market Access in Goods

Mercosur countries were eager to lower expectations (take less ambitious commitments) in services, government procurement and intellectual property, but insisted that countries take on more ambitious commitments in market access in goods or agriculture. It appears that their position since Miami has remain unchanged, and perhaps has taken a harder line.

- **Agriculture:** MERCOSUR wants disciplines on domestic support and export subsidy elimination.
- **Market Access:** On market access for industrial and consumer goods, Mercosur wants all items covered.
- **Services, Government Procurement and Intellectual Property:** Mercosur wants to take on services commitments that do not go beyond its GATS commitments, not undertake market-access commitments in government procurement (only transparency), and make no commitments beyond TRIPS in intellectual property.

The United States expressed frustration at Mercosur's position, and does not consider the approach "balanced."

### C. Puebla Delegations Discuss Structure for Plurilaterals

Regarding plurilateral agreements, Ministers in Puebla discussed the following

- Plurilaterals will be conducted within the framework of the FTAA.
- Documentation for the plurilaterals will be available to everyone, whether they are part of the plurilateral or not.
- All countries have the right to observer status, regardless of whether the country is part of the plurilateral.
- The Puebla delegations are still considering the rights of observers and the rights of countries that decide to join plurilaterals after negotiations have begun.

### III. Mercosur Reacts to U.S. Positions on Agriculture, Market Access and Labor

Mercosur officials and the local press commented on the latest negotiations as follows:

#### A. Agriculture

- *Compensation* – Mercosur’s demand that met with the greatest resistance from the US was the request for **compensation** for exports that originate from countries that use export subsidies.
- *Safeguards* – Mercosur rejected the U.S. proposal for an agricultural **safeguard**. The bloc fears that its main agricultural exports would suffer from safeguards applied by the US.
- *Market Access* – Mercosur’s agricultural sector does not necessarily share the same views as their governments. The Brazilian agricultural sector places more emphasis on gaining **market access** for agricultural products in the FTAA than eliminating domestic support and export subsidies. As Pedro de Camargo Neto of the Rural Brazilian Society has pointed out, some Brazilian agricultural products are more competitive than U.S. products even with U.S. subsidies/domestic support.
- *Balanced commitments* – Gilman Rodrigues of the Brazilian National Confederation of Agriculture, argues that Mercosur should offer more bargaining chips in areas of US interest to obtain a good agriculture deal.

#### B. Market Access

- *Coverage* – The US, backed by 13 other countries, insisted that the FTAA should encompass “substantially all trade” and not “all trade.” Mercosur fears that its key exports would be excluded if the FTAA market access chapter were to be based on “substantially all trade.”

#### C. Labor and Environment Provisions

- **Exclusion** – Mercosur opposes the inclusion of labor and environment in the FTAA, since they do not refer to trade per se. (Reportedly, Brazil has no problem with including labor and environmental regulations in the FTAA, as they comply with ILO and other international standards. Brazil, however, opposes the inclusion of trade sanctions for the violation of labor or environmental regulations.) Nevertheless, the Brazilian CUT (a major Brazilian Labor Union) has publicly urged the government to include minimum labor rights to protect Brazilian workers in the FTAA, a position that the government refuses to accept.

### **OUTLOOK**

US negotiators at Puebla emphasized the positive working environment and noted that **both** the US and Brazilian co-chairs agreed on the need to recess. The USTR representative said the break is necessary for delegations to consult with their capitals to ensure the final guidance provided to the negotiating groups is useful. Despite the positive statements, the meeting in Puebla clearly ran into difficulties as positions remained unchanged, or have hardened since Miami.

The depth of the common FTAA agreement will depend, to a certain extent, on the ability of the United States and Brazil to agree on difficult issues. The content and scope of the common FTAA agreement is less ambitious than the originally envisioned FTAA. Plurilateral agreements are intended to strengthen commitments in certain areas, but might not include key countries such as the Mercosur countries. The collective failure to agree on some type of baseline agreement on agriculture and other contentious issues at the Puebla meeting (once it resumes) could jeopardize the already scaled-back FTAA.

During the second week of February, meetings among the G-20 countries and developed countries (EU, Japan and the US) will occur in Geneva to try to advance the WTO agriculture agenda. The Cairns Group will also meet in Costa Rica in late February. The FTAA process would benefit from progress in these meetings.

## **WTO REPORTS**

### **WTO Trade Policy Review of the United States More Critical Than in Past; Members Welcome USTR Zoellick Initiative on Doha Round**

#### **SUMMARY**

The World Trade Organization (WTO) has recently concluded the biannual Trade Policy Review (TPR) of the United States, based on the WTO Secretariat's report, the U.S. Government policy statement and scrutiny by WTO Members. The Secretariat's report contains a comprehensive review of U.S. trade policy covering the period 2001-2003, including recent economic developments, trade policies by measure, and sector-specific issues.

WTO Members, both industrialized and developing countries, stepped up their criticism of U.S. practices as compared to previous years. The Secretariat's report warned of risks to the multilateral trading system due to mounting U.S. fiscal and trade deficits, and U.S.

attention to FTA agreements. The Secretariat and Members also raised concerns on access to the U.S. market due to trade remedy barriers, new trade-related security measures, and the possible distorting effects of the U.S. Farm Bill. Members strongly criticized the lack of U.S. compliance with WTO dispute settlement rulings and market access barriers in sectors of interest to developing countries.

Members also used the occasion of the TPR meeting to welcome USTR Zoellick's initiative urging new momentum to the stalled "Doha Round." Members generally viewed this development as a positive sign from the United States, and an indication of its commitment to the WTO and the Round.

## **ANALYSIS**

### **I. Background and Context of the Latest U.S. TPR Meeting**

On January 14 and 16, 2004, WTO Members conducted the seventh Trade Policy Review (TPR) of the United States. As one of the four Members with the largest share of world trade, the United States is subject to the TPR every two years. (Other, smaller economies are subject to the TPR less frequently.) The TPR Mechanism allows the WTO Secretariat and Members to scrutinize the trade and economic policies of countries subject to review. As in the case with other reviews, the TPR of the United States was carried out on the basis of a policy statement by the U.S. government<sup>2</sup>, and a preliminary report prepared by the WTO Secretariat staff.<sup>3</sup> These reports were submitted prior to the January meeting, and are the basis for the discussion. Members then have the right to submit questions to the United States based on these reports, and at the TPR meeting. The Secretariat then prepares a final report, which will be released several months after the TPR meeting.

During the period under review (2001-2003), the U.S. economy was affected by major internal and external shocks including a sharp fall in stock prices, several corporate scandals and failures, the September 2001 terrorist attack, and wars in Afghanistan and Iraq. The economy also experienced a short and shallow recession in 2001, followed by slow recovery in 2003.

The Secretariat's report cited several aspects of U.S. trade and economic policies that raise concerns, but refrained from direct criticism. Members, however, were more assertive and criticized the United States for lack of compliance in several WTO disputes, U.S. attention to bilateral FTAs, the distorting effects of the Farm Bill, and use of trade remedies, among other issues. Nevertheless, they took the occasion of the meeting to welcome USTR Zoellick's recent efforts to encourage momentum in the Doha Round.

We provide below a summary of the Secretariat's main findings, and Members' reactions at the TPR meeting.

### **II. Summary of WTO Secretariat Findings**

#### **A. Macroeconomic Developments: Growing Deficits a Global Concern**

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<sup>2</sup> WT/TPR/S/126.

<sup>3</sup> WT/TPR/G/126.

The Secretariat warned that the mounting U.S. fiscal and current account (trade) deficits could threaten the stability of the world economy. Nevertheless, it emphasized that the efficiency and openness of U.S. capital markets are positive forces for domestic and international growth. The Secretariat also cautioned that the sustainability of the current account deficit remains an open question, and could fuel growing protectionist sentiment (e.g., criticism of China due to large bilateral trade imbalances).

According to the Congressional Budget Office (CBO), the fiscal deficit totaled US\$374 billion for FY 2003 (3.5% of GDP), the largest in dollar terms in U.S. history, and twice as large as the deficit posted in FY 2002. Some of the main triggers of the increase in the fiscal deficit were defense spending (+ 16%) and discretionary spending (+ 12%). In addition, the IMF believes that recent tax cuts have weakened the U.S. fiscal position. The Secretariat notes that deficits of up to 4% of GDP can be expected for the next few years. Recent fiscal deficits have prompted a rise in public debt, which grew as a share of GDP to 61.9% in FY 2003.

The deficit as measured in the current account of balance-of-payments increased in 2002 to a record of US\$ 480.9 billion (4.6% of GDP). The OECD predicts the deficit will increase further, to over 5% of GDP in both 2003 and 2004. The larger deficits could expose the U.S. economy to greater financial shocks, especially with the decline in foreign direct investment (and the fact that a substantial part of the deficit has been financed with foreign debt). Moreover, an increase in imports combined with weak export performance triggered a larger trade deficit for goods in 2002. In the same year, the surplus in services contracted (the first time in many years), which worsened the overall trade balance.

#### **B. Trade Negotiations: Renewal of Trade Promotion Authority and Need to Focus Resources**

The Secretariat report welcomed the Trade Act of 2002, which renewed trade promotion authority (TPA or “fast-track”) and brings greater predictability to trade negotiations. TPA renewal has also encouraged the United States to focus increasingly on bilateral and regional free trade negotiations, a process which has accelerated since the Cancun Ministerial collapse in September 2003. While the United States has stated that its policy of “competitive liberalization” is intended to encourage liberalization at the WTO, the Secretariat cautions that care should be taken in order that negotiating and administrative resources are not distracted away from the multilateral system.

The U.S. attention to FTA negotiations is understandable as it has few FTAs in place. As of June 2003, the United States had free trade agreements in force with Canada and Mexico (NAFTA), Israel and Jordan. It had completed agreements with Chile and Singapore (in force as of January 2004), and is negotiating with Australia, five Central American countries (CAFTA), the Dominican Republic, Morocco, Bahrain, and members of the Southern African Customs Union.<sup>8</sup>

#### **C. Trade Remedies: Frequent Usage Poses Barriers to Trade**

The frequent use of trade remedies in the United States remains a key form of protection from imports, according to the Secretariat. Initiations of antidumping (AD) investigations increased in 2001, to the highest level since 1992, but decreased in 2002 and the first half of 2003. A large number of cases involved steel-related products. The number of initiations of countervailing (CVD) cases increased only slightly in 2001-2002 over the

1999-2000 period. Only one safeguard investigation was initiated since 2002 under Section 201, but the scope of the measure on steel was wide, and affected a large number of steel products from many trading partners.

The active use of trade remedies has continued to generate uncertainty for foreign exporters and has resulted in a large number of WTO disputes. Panels and the Appellate Body found in many cases that several aspects of U.S. law or practice were inconsistent with WTO rules, including the Byrd Amendment, the Anti-dumping Act of 1916, the methodology used by U.S. authorities to determine the existence of subsidies following privatization, and recently, the Section 201 safeguard measure on steel.

#### **D. Farm Subsidies: Growing Concern Over Domestic Support Programs**

The Secretariat noted that since the last review, there have been sizeable federal financial transfers in air transport (in the aftermath of the September 2001 attacks), and in agriculture. The Farm Security and Rural Investment Act of 2002 expanded the coverage of marketing loan provisions, and introduced a counter-cyclical income support mechanism that, although not linked to current production, increases subsidies when commodity prices fall, and vice-versa. The new legislation may thus further blunt the effects of the market on production decisions, and runs the risk of large increases in assistance in the event of falling prices.

#### **E. Post 9/11 Security Measures: Possible Barriers to Trade**

Significant changes in U.S. trade and investment policies have taken place as a consequence of the September 2001 attacks in order to ensure the nation's security. Government reorganization came about with the formation in January 2003 of the Department of Homeland Security, which now includes U.S. Customs and Border Protection (formerly U.S. Customs Service). Shortly afterwards, the United States introduced ambitious security-related initiatives including the Bioterrorism Act,<sup>9</sup> the Container Security Initiative,<sup>10</sup> the 24-hour Advance Vessel Manifest Rule,<sup>11</sup> and the Customs-Trade Partnership Against Terrorism.<sup>12</sup>

The Secretariat commented that it is too early to assess the economic impact of these measures, and whether the new policies and practices have become trade or investment barriers. However, the report noted that several Members have expressed concern over the Bioterrorism Act in the WTO's Committee on Sanitary and Phytosanitary Measures.

### **III. WTO Members' Reactions**

The latest review was marked by growing criticism of U.S. trade policies from both industrialized and developing countries. In particular, Members expressed concerns regarding:

- *Poor record of U.S. WTO compliance*, which could undermine the credibility of the dispute settlement system. Outstanding issues include the "Byrd Amendment", the 1916 Antidumping Act, the Foreign Sales Corporation/Extraterritorial Income Exclusion Act and Section 211 of the US Omnibus Appropriation Act;

- *Security-related measures*, in particular the new requirements to counter bioterrorism. Members urged the US to implement security measures in the least trade-restrictive manner, and not to use them as a disguised form of protectionism;
- *Farm Bill and related-legislation*, noting that the US has bucked the global trend towards reducing agricultural support and other subsidy programs;
- *Extensive use of antidumping and countervailing measures*, including simultaneous antidumping and countervailing measures on steel products, as well the safeguard measure (rescinded last December 2003); and
- *Array of market access barriers (to developing country exports)*, including tariff peaks, non-*ad valorem* duties, tariff escalation and the U.S. tariff-quota system. These barriers are prevalent in sectors such as agriculture and textiles, which are of particular interest to developing countries. Various Members also referred to certain SPS and environmental measures as unjustified barriers to trade.

The U.S. officials present at the review dismissed many concerns voiced by WTO Members. For some of these issues like agriculture, the officials noted that the United States would be willing to reduce its subsidies if other countries also undertake liberalization commitments. The officials challenged WTO Members to engage in negotiations based on the ambitious proposals that the United States has tabled in the Doha Round, including on industrial market access and agriculture.

On a more positive note, Members also used the occasion of the review to welcome USTR Zoellick's letter (dated January 11, 2004) to trade ministers urging them to reengage on key Doha Round issues so that 2004 does not become a "lost year." Members have viewed it as a strong signal of U.S. re-engagement and leadership in the Doha process, having been uncertain about U.S. sentiment towards multilateralism after Cancun, and during a presidential election year.

### **OUTLOOK**

The latest trade policy review of the United States was marked by increasing concerns among WTO Members and the Secretariat about growing protectionism and macroeconomic imbalances in the world's largest economy. Since the United States continues to be among the most important (if not most important) trading partner for many Members, the health of the U.S. economy, and U.S. engagement in the multilateral process is critical to the health of the world trading system.

Among the specific concerns raised at the review, it appears that some of these issues will be difficult to resolve (*e.g.*, compliance with sensitive dispute decisions like the Byrd Amendment; but some hope for FSC/ETI compliance) while others are less intractable (*e.g.*, the increase in farm subsidies could be reversed with progress in the Doha Round). Still, the trade-distorting effects of some measures are hard to predict, including the new security-related measures and future trade remedy actions.

On a broader perspective, the macroeconomic conditions underlining the U.S. economy are less encouraging. The U.S. deficits are at their highest levels in history, and are being exacerbated by growing capital outflows, which would only worsen U.S. ability to service its debt. Moreover, U.S. trade deficits are expanding, especially with countries including China – and could further spur protectionist sentiment. In the current slow and “jobless recovery” trade frictions are set to increase without a major economic revival.

Nevertheless, the United States surprised many WTO Members with USTR Zoellick’s re-engagement in the Doha process, despite the less favorable political climate during an election year. U.S. leadership and commitment to the Doha process is critical to prevent further backsliding among U.S. domestic constituencies, as well as by WTO Members, towards damaging protectionist policies.



## Restart of Negotiations in the WTO Doha Development Agenda; USTR Zoellick Visits Key Capitals to Spur Momentum in the Round

### SUMMARY

The General Council of the World Trade Organization, at its meeting on 11 and 12 February, took the decisions necessary to restart the negotiations which have been suspended since the failure of the Ministerial meeting in Cancun in September. Delegations in Geneva and officials visiting from capitals will now restart an intensive process of meetings of the negotiating groups, culminating in a “reality check” of substantive progress in July. The Council, however, was unable to agree on a date for the next Ministerial Conference, which makes it very unlikely that it could be held during 2004.

Meanwhile, USTR Zoellick is at the conclusion of his “world tour” of key capitals and other meetings to encourage momentum to the Round, as a follow-up to his letter to Ministers in January. Zoellick has met with many ministers since February 11, including in Tokyo, Beijing, Singapore, Islamabad, New Dehli, Mombasa (Kenya), Cape Town, Geneva, Paris (and shortly in Costa Rica). Among his ideas, he has proposed holding a “Special Session” in Geneva by this summer (by July), which could include ministerial-level participation in order to agree on frameworks for moving negotiations forward on agriculture, industrial market access, the Singapore Issues, and other matters left outstanding since Cancun.

Zoellick has reported that overall, there is strong support for moving the Doha process forward this year, and the most critical issue is to set targets for agriculture liberalization.

#### I. Appointment of New WTO Chairpersons

##### A. New General Council Chair, Negotiating Chairs and Committee Chairs Appointed

Following the consultations led by the outgoing Chairman of the General Council, Ambassador Perez del Castillo of Uruguay, the Council was able to agree on Chairpersons for the standing WTO bodies and for the negotiating groups set up under the Trade Negotiations Committee (TNC) to carry out the Doha Round negotiations.

Among the appointments which have been made, some of the most notable are those of Ambassador Oshima of Japan as Chairman of the General Council and of Ambassador Mohamed of Kenya to the chair of the Dispute Settlement Body (DSB). The DSB Chair is frequently seen as the stepping-stone to the chair of the General Council, which in the course of the normal rotation is expected to be held by an African Ambassador in 2005. The appointment of Ambassador Groser of New Zealand to chair the negotiations on Agriculture is also noteworthy, as is that of Ambassador Perez Motta of Mexico for the negotiations on Rules (essentially subsidies and antidumping disciplines) and the retention of Ambassador Jara of Chile as Chair of the negotiations on services.

#### Chairpersons of WTO bodies for 2004

General Council

Amb. Shotaro OSHIMA (Japan)

Dispute Settlement Body

Amb. Amina MOHAMED (Kenya)

Trade Policy Review Body	Amb. Puangrat ASAVAPISIT (Thailand)
Council for Trade in Goods	Amb. Alfredo CHIARADIA (Argentina)
Council for Trade in Services	Amb. Peter BRNO (Slovak Republic)
Council for TRIPS	Mr. Joshua LAW (Hong Kong, China)
Committee on Trade and Environment	Amb. Naéla GABR (Egypt)
Committee on Trade and Development	Amb. Trevor CLARKE (Barbados)
Committee on Balance-of Payments Restrictions	Mr. Giulio TONINI (Italy)
Committee on Regional Trade Agreements	Amb. Ronald SABORÍO SOTO (Costa Rica)
Committee on Budget, Finance and Administration	Amb. Henrik Rée IVERSEN (Denmark)
Working Group on Trade and Transfer of Technology	Amb. Jaynarain MEETOO (Mauritius)
Working Group on Trade, Debt and Finance	Amb. Péter BALÁS (Hungary)

Chairpersons of WTO Negotiations Groups (until the 6th Session of the Ministerial Conference; date to be determined)

Negotiating Group on Market Access	Amb. Stefán JÓHANNESSON (Iceland)
Negotiating Group on Rules	Amb. Eduardo PÉREZ MOTTA (Mexico)
Special Session of the Council for Trade in Services	Amb. Alejandro JARA (Chile)
Special Session of the Council for TRIPS	Amb. Manzoor AHMAD (Pakistan)
Special Session of the Dispute Settlement Body	Amb. David SPENCER (Australia)
Special Session of the Committee on Agriculture	Amb. Tim GROSER (New Zealand)
Special Session of the Committee on Trade and Environment	Amb. Toufiq ALI (Bangladesh)
Special Session of the Committee on Trade and Development	Mr. Faizel ISMAIL (South Africa)

**B. No Appointments Yet for Chair(s) of Singapore Issues**

No appointments have been made at this stage to the chair(s) of the Working Groups on the Singapore Issues. Since there is no agreement on a number of substantive issues in these areas – above all on whether there should be negotiations on Investment and Competition – it was thought better to leave these appointments in abeyance at this time, though it was said that this was without prejudice to the status of these groups. Work will continue as stated by Mr. Perez Del Castillo at the December meeting of the Council: this

means that on Trade Facilitation and Transparency in Government Procurement the possibility of multilateral agreements will continue to be pursued in consultations under the chairmanship of Deputy Director-General Rufus Yerxa, who will report to the General Council.

On the two remaining issues, Investment and Competition, the question of what treatment they might receive will be taken up at some “appropriate time in the future”, possibly also in the context of Mr. Yerxa’s consultations. These arrangements are in line with the widely shared view that there will be agreement to negotiate on Trade Facilitation and perhaps Transparency in Government Procurement but that any kind of multilateral negotiations on Investment and Competition are most unlikely.

### **C. Moving Forward From Now Until the Summer**

With the appointment of the new Chairpersons, delegations in Geneva and officials visiting from capitals will re-launch an intensive series of meetings of the negotiating groups. The chairpersons of the Negotiating Groups (except Singapore Issues) will set schedules for future negotiating sessions, which have been mostly dormant since prior to Cancun. For example, the next “Services cluster” of negotiations will take place for two weeks starting March 22 in Geneva.

The overseeing body, the Trade Negotiations Committee (TNC) is expected to meet in the second half of April to take stock of progress, and in July a “reality check” will take place. At the least, by this summer, the “frameworks” for negotiations on agriculture and tariffs should by then have been agreed, and the necessary decisions should have been taken about negotiations on the Singapore issues. These were the decisions which it was hoped to take at Cancun.

There is currently much discussion, prompted by USTR Zoellick and EC Trade Commissioner Pascal Lamy and others, of the possibility of holding a “Special Session” (perhaps by the July TNC) that could include ministers, in order to agree on the necessary framework agreements to move negotiations forward.

## **II. USTR Zoellick “World Tour” to Rally Support for the Round**

USTR Robert Zoellick has recently concluded a global tour of major capitals and events to meet with ministers, in a follow-up to his letter to Ministers on January 11. Since February 11, Zoellick has met with groups of key ministers in Tokyo, Beijing, Singapore, Islamabad, New Delhi, Mombasa (Kenya), Cape Town, Geneva, Paris (and later to Costa Rica this week).

Zoellick’s objective during the trip was to get a sense of countries’ positions on five major issues: (1) interest on moving the agenda forward and how to do so; (2) top negotiating priorities; (3) ways the US could help move the process forward; (4) what other countries might do to move the process forward; and (5) how to make progress this year, bilaterally, in Geneva or otherwise.

Zoellick has indicated in his joint-press conferences that overall, there is “good strong interest” among ministers to move the Doha process forward. In addition, the key priority raised during his meetings remains agriculture, and especially the elimination of export

subsidies. EC Commissioner Lamy and Director General Supachai also met Zoellick during his trip to Africa and Europe, in an effort to coordinate support for the Round.

### **A. Proposal to Agree on Frameworks by Summer**

USTR Zoellick proposed during his trip to hold a high-level meeting in Geneva this summer (presumably by July), short of a “full blown ministerial” in order to establish the frameworks for future negotiations on agriculture, industrial market access, the Singapore Issues and other outstanding issues. The meeting could take place in a “Special Session” that would allow ministers and other high-level officials to agree on many of the issues intended at the Cancun Ministerial before the collapse. The meeting would be held prior to the departure of EU Trade Commissioner Pascal Lamy, who is scheduled to depart by the end of October.

For example, on agriculture, the United States would support setting an end-date for reduction of agriculture subsidies – a more ambitious position than it took in Cancun, and the most difficult issue for the EU. Moreover, the United States would face additional pressure to reduce domestic support programs for agriculture. (The “Derbex text” floated at Cancun would allow spending of up to five percent of total agriculture production on “blue box” programs – a figure considered too high by other agriculture exporting countries.)

The EU, however, has been unclear on whether it could accept an end date for the elimination of export subsidies (at least not now, but perhaps later in the negotiation). The EU indicated flexibility for products of interest to developing countries, with the exception of sensitive commodities including beef, dairy and sugar. An eventual trade-off could involve the extension of the peace clause (which expired at the end of 2003) until the end of negotiations.

EU Agriculture Commissioner Franz Fischler this week in Washington stated that it would be difficult for the EU to commit to a firm date at this stage. He acknowledged, nevertheless, that the EU might be the target of many WTO challenges to agriculture subsidies unless the peace clause is extended, or progress made in Doha talks.

### **B. USTR Zoellick Highlights Major Issues in Tour**

#### **1. Asian Support for Special Session in Geneva; Broader Agenda**

In meetings in Tokyo, Beijing and Singapore (among several ASEAN trade ministers), Zoellick received strong support for engagement in the Round. In China, Zoellick indicated that U.S. and Chinese positions are aligned on many issues. In Singapore, Zoellick received support from Singapore Minister George Yeo and others for holding a “Special Session” in Geneva by this summer to agree on frameworks for Doha negotiations.

In his meetings in Islamabad and New Delhi, Zoellick reported a narrowing of differences on issues including agriculture, industrial market access and trade facilitation, and support for improving market access for services trade. (Zoellick also faced many questions on U.S. restrictions on outsourcing in India, which has become a high-profile bilateral issue.)

#### **2. African Support for Trade Facilitation; Engagement in Round**

At a key meeting of African ministers in Mombasa, Kenya on February 18 (attended by Zoellick, Commissioner Lamy and Director General Supachai), African ministers on

behalf of the “G-90” Group indicated their broad support and “purposeful interest” to engage in the Round, and increasing flexibility to move forward on sensitive issues including trade facilitation (their resistance to the issue in Cancun, among others, ultimately led to the collapse of the Ministerial). The host, Kenyan Minister Katuyi, indicated that Africa wasn’t ready to “expose [its] hand” on the Singapore Issues, but did not object to negotiations either.

Earlier that week, South African Trade Minister Alec Erwin on February 17 supported Zoellick’s position on trade facilitation and indicated that they agree that the issue “is something that could be dealt with.” Erwin also stated that most WTO Members felt that trade facilitation could move forward, but the other three Singapore issues of investment, competition and transparency in government procurement should be dropped. Commissioner Lamy at the Mombasa meeting the next day stated that he supports negotiations on trade facilitation and transparency in procurement, and would be willing to have investment and competition negotiations “dropped out of sight.” Zoellick said he would go “one step further” and only lend support to trade facilitation, if that was necessary to move forward.

### **3. Cairns Group to Discuss Agriculture Strategy in Costa Rica**

USTR Zoellick will join a meeting of the Cairns Group of agriculture exporters in Costa Rica this week to discuss ways to move forward on agriculture positions. The revival of the Cairns Group, which is seen as more moderate than the “G-20” group of developing countries that formed prior to Cancun, would be an important development.

## **III. Timing of the Sixth Ministerial Conference**

This issue of holding a Sixth Ministerial Conference in 2004 was placed on the agenda by the United States following Ambassador Zoellick’s proposal, in his letter of 11 January to all WTO Trade Ministers, that a Ministerial Conference should be held this year to give impetus to the negotiations.

### **A. General Council Divided on Whether to Hold a Ministerial in 2004**

The General Council, however, did not reach agreement on whether to hold a Ministerial this year. The Council was effectively split down the middle, with many delegations arguing that it would be a mistake to fix another deadline without more clarity as to what it would be possible to achieve on substance during 2004, while others agreed with the US on the need to create momentum and avoid the danger of 2004 being in effect a lost year. The EU argued for a Ministerial well before the end of the year, in late summer: Pascal Lamy will leave his post in the European Commission in October.

### **B. Hong Kong and Swiss Reluctance to Hold a Ministerial in 2004**

It has already been agreed that the next Ministerial Conference should be held in Hong Kong. The Government of Hong Kong, which had earlier said that it would need 12 months’ notice in order to prepare for the conference, said that it would still be possible to meet in 2004 if the decision were taken now. But if a late-summer meeting were envisaged it could not take place in Hong Kong, and by default would probably have to be held in Geneva. This also explains the recent focus of the US and EU on holding a late-summer “Special Session” in Geneva, which could include some ministers. The Swiss, like Hong Kong, would not doubt have some difficulty in organizing a formal Ministerial meeting in short notice. Thus, given the practical difficulties of organization and the doubts of many Members as to

the desirability of a Ministerial meeting in this year, it seems most probable that the next Ministerial Conference will be held in Hong Kong, perhaps in mid 2005.

It has been suggested that Ministers should meet to agree on a new concluding date for the Round, and it is certainly true that such a decision is inescapable. The Doha Declaration says that the negotiations “shall be concluded not later than 1 January 2005.” This is clearly out of the question, as has been obvious for many months, but a positive decision will be needed to vary the decision taken at Doha. However, that decision need not be taken at Ministerial level; the General Council has the necessary powers.

#### **IV. Other Issues**

Among the other issues discussed by the General Council the most notable were the acceptance of Iraq’s request for observer status and the refusal of Iran’s request to accede to the WTO. The latter is a long-standing item on the Council’s agenda: the request has latterly been blocked by the US, which at this meeting said that it continued to have the question under review. Pressure for acceptance of Iran’s request is growing, and the question will be taken up again at the next meeting of the Council.

### **OUTLOOK**

Discussions on moving the Doha Round forward have increased in pace and substance with the decisions of the General Council meeting in February, and during USTR Zoellick’s visit to rally support among key ministers in Asia, Africa, Europe (and later Latin America). Not since Cancun has there been this much effort towards reviving momentum for the Round.

During Zoellick’s visits to capitals and major trade events, he has floated and gained growing support for the idea of holding a “Special Session” which could include ministerial-level participation, in order to agree on negotiating frameworks on issues including agriculture, industrial market access, Singapore Issues and other outstanding issues. Zoellick supports this meeting in Geneva before the end of July, and to include the participation of Commissioner Lamy before he leaves office in October. Members should have taken these decisions at Cancun, but any likely outcome will be less ambitious in certain areas (e.g., only negotiation of Trade Facilitation) and more ambitious in others (e.g., ambitious reduction/elimination targets for agriculture).

The Mombasa meeting of African Trade Ministers, which was attended by USTR Zoellick, Commissioner Lamy and by the WTO Director-General Dr. Supachai, was an important step towards gaining African support for breaking the deadlock on the Singapore Issues (the issue which ultimately caused the Cancun Ministerial to collapse). At this stage, many expect negotiations on Trade Facilitation to move forward, but the other issues to be sidelined.

In any event, the critical issue remains agriculture – Zoellick indicated the same at Mombasa, saying that this was the “number one topic” to resolve in the Round and reinforced during his recent meetings, and that the “key message” is the elimination of export subsidies. Resolution of the agriculture issue greatly depends on whether the EU can agree on an end date for the elimination of export subsidies. The United States has shifted its position on this issue since Cancun, and now supports the wide majority of WTO Members to establish an end date. The EU has sent mixed signals on whether it could agree to an end date at any

high-level meeting this summer. It remains uncertain whether the Cairns Group and G-20 countries seeking agriculture reform will accept anything less than firm and clear reduction commitments. Without agreement on agriculture, all other issues on the Doha agenda remain at risk.

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