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WTO AND REGIONAL TRADE AGREEMENTS MONTHLY REPORT

July 2004

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

TABLE OF CONTENTS

SUMMARY OF REPORTS

Special Report

Kerry and Edwards Express Views on International Trade Issues

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United States

Outlook for TPA Extension Remains Positive

When Congress granted the President Trade Promotion Authority (TPA) in the Trade Act of 2002, it set July 1, 2005 as a preliminary date for the expiration of the authority. The Trade Act of 2002 provides for a two-year extension. The process for obtaining an extension must start no later than March 1, 2005, when the President is required to submit a report on the use of TPA and any request for an extension. Members of the trade community, including staff on the relevant Congressional committees expect Congress overwhelmingly to support extending TPA until July 1, 2007.

A change in the occupant of the White House following the November 2004 election is unlikely to change the prospects for TPA renewal. Senator Kerry was criticized in May 2004 for his failure to formally endorse an extension of TPA, but has since expressed his intention to seek one if elected. President Bush has expressed his intention to seek an extension of TPA.

The renewal of TPA will give breathing space to ongoing negotiations between the United States and Thailand, the Andean Community and the Southern African Customs Union (SACU). The Central America Free Trade Agreement (CAFTA), having already been signed, will qualify for consideration under TPA regardless of when the President submits implementing legislation to Congress. In addition, the slow progress made in the Doha Development round and the Free Trade Area of the Americas make the original completion of both agreements in early 2005 unrealistic. Renewing TPA will be essential if the United States hopes to maintain credibility during the negotiations.

Trade-Related Appropriations and Authorization Bills Move Forward in Congress

As the summer recess approaches, scheduled to begin on July 23, 2004, Congress remains focused on completion of the 13 annual appropriations bills needed to fund the Federal Government for the fiscal year starting on October 1, 2004 (FY2005). The summer nominating conventions and the Fall elections leave Congress with a limited number of legislative days in which to complete the appropriations process. It is possible that Congress will fund some federal agencies through a continuing resolution (CR), which would likely limit agencies to FY2004 budget levels.

Trade related appropriations bills have made some progress, particularly the Department of Homeland Security appropriations bill. Thus far, the President's FY2005 budget requests for trade related agencies have been preserved, and little opposition has emerged.

In addition to the appropriations bills, the House continues to make progress on the Customs Border Security and Trade Agencies Authorization Act of 2004 (H.R. 4418). The biannual authorization bill for customs and the trade related agencies sets out appropriations targets and policy priorities for FY2005 and FY2006.

U.S. Signs TIFAs With Mongolia and Oman; Announces TIFA Negotiations With Afghanistan

We want to alert you to the following developments:

- On July 15, 2004, the United States signed a bilateral Trade and Investment Framework Agreement (TIFA) with Mongolia.
- On July 7, 2004, the United States signed a TIFA with Oman.
- On June 15, 2004, President Bush and Afghani President Hamid Karzai announced that the U.S. and Afghanistan will pursue a TIFA.

United States Highlights

We want to alert you to the following trade developments in the United States:

- USTR Publishes Request for Special 301 Comments
- U.S. and China Resolve Dispute Regarding China's VAT Policy

Free Trade Agreements

House and Senate Approve U.S.-Australia and U.S.-Morocco Free Trade Agreements

Congress, by a strong bipartisan majority, has adopted implementing legislation for the U.S.-Australia and U.S.-Morocco Free Trade Agreements (FTAs).

The House overwhelming approved the legislation on the Australia FTA by a vote of 314 to 109 on July 14, 2004. The Senate approved the legislation one day later by a vote of 80 to 16.

The Senate approved the U.S.-Morocco FTA on July 21, 2004 with a vote of 85 to 13 and the House approved it on July 22, 2004 with a vote of 323 to 99.

Adoption of the Australia and Morocco FTAs is likely the last major trade action Congress will take prior to the Fall Election.

Senator Baucus Discusses the Future of Free Trade Agreements

On July 13, 2004, the Global Business Dialogue hosted a discussion with Senator Max Baucus (D-Montana), ranking member of the Senate Finance Committee. Senator Baucus addressed deficiencies in the Administration’s approach to Free Trade Agreements (FTAs), particularly with respect to the selection of free trade partners. Baucus also discussed the important of labor and environment standards in trade agreements, and warned that without such improvements, the Central American Free Trade Agreement (CAFTA) was not likely to gain Congressional approval.

Free Trade Agreements Highlights

We want to alert you to the following trade developments for the Free Trade Agreements:

- Agencies Seek Comments on Labor Rights in Panama, Thailand, Andean Countries and SACU Countries

- TPSC Requests Comments on Interim Environmental Review U.S.-Panama FTA.

Customs

CBP Amends Bond Directive for Certain Goods Subject to AD/CVD

The Bureau of Customs and Border Protection (CBP) has issued an amendment to existing directives that govern the bond requirements for certain imported goods subject to antidumping or countervailing duties (AD/CVD). The amendment will require higher bonds to be posted by importers of agricultural and aquaculture products. The change in bond requirements is the result of Congressional pressure on CBP to better enforce U.S. trade laws, and increase disbursements under the Continuing Dumping and Subsidy Offset Act (Byrd Amendment).

US – European Union

US and EU Pledge to Strengthen Transatlantic Economic Partnership at Annual Summit

On June 26, 2004, European Commission President Romano Prodi and Irish Prime Minister and European Council President Bertie Ahern met with U.S. President George W. Bush at the annual EU-US Summit in County Clare, Ireland. A large part of the discussions focused on economic issues, and at the end of the Summit both parties issued a joint statement wherein they pledged to strengthen the Transatlantic Economic Partnership.

Recognizing that regulatory differences were the most significant barriers to transatlantic trade, the parties also announced the "U.S.-EU Regulatory Cooperation Roadmap". This roadmap provides a framework for cooperation and aims order to promote better quality regulation, minimize regulatory divergences, and facilitate transatlantic trade.

US – Latin America

Kerry Announces Plan to Strengthen Relations with Latin America

At the annual convention of the National Association of Latino Elected and Appointed Officials (NALEO) on June 26, 2004, presumed Democratic presidential candidate John Kerry introduced his vision for strengthening U.S. relations with Latin America and enhancing opportunities for Latinos in the U.S.

In his speech, Senator Kerry attacked the Bush administration for failing to promote democracy and fair trade in the region. As president, Kerry would reverse this pattern and pay close attention to the economic and political needs of the region. Kerry outlined his plan for the region, which included creating a "Community of the Americas," strengthening democracy, promoting free and fair trade, and reforming America's immigration laws.

NAFTA

Mexico and US Agree to Improve Regional Competitiveness at Partnership for Prosperity Conference; OPIC Agreement Enters Into Force

On June 28-29 Government officials and representatives from the private sector held a session in Guadalajara on the Partnership for Prosperity Initiative. Mexico and the United States agreed to: (i) improve regional competitiveness and infrastructure; (ii) increase rural economic growth; and (iii) support small and medium enterprises.

In related news, the Ministry of Economy published on June 14, 2004, in the *Diario Oficial,* a decree that establishes the entry into force of the U.S.-Mexico Overseas Private Investment Corporation (OPIC) agreement. The agreement will facilitate U.S. investment into Mexico and contribute to the Partnership for Prosperity efforts.

NAFTA Highlights

We want to alert you to the following trade development for NAFTA:

- Modifications to NAFTA Rules of Origin Takes Effect for Mexico

Multilateral

Speakers Discuss the Future of the Doha Round, Upcoming WTO Accessions

Women in International Trade (WIIT), a DC-based trade association, hosted on July 1, 2004 a panel discussion on the future of the Doha Round and the upcoming World Trade Organization (WTO) accessions. Speakers discussed WTO efforts to reach framework agreements at the critical General Council meeting at the end of July, and the status of WTO accession negotiations including Russia.

WTO Members Engage in Intensive Negotiations on WTO Draft Framework Agreements; General Council Chair Warns of "Drop Dead" Date of July 30

The submission of the "July package" of draft framework agreements on July 16 has been followed by a week of intense and difficult negotiations by delegations in Geneva. Although most WTO Members agree that the texts offer a basis for agreement at the crucial General Council meeting on July 27-29, there are substantial differences on all of the major issues. There is also controversy over the texts' presentation of certain issues, including services. It is clear that there is a real possibility of failure to resolve them all in the few days remaining.

Following an initial discussion among Heads of Delegation early this week, WTO Members have begun intensive discussions in different working groups on the key issues included in the framework agreements. The outcome of these discussions will determine whether there can be agreement on detailed negotiating guidelines on subjects like agriculture, or if Members can only agree to shorter and less specific language for the frameworks. What is apparent, as General Council Chairman Shotaro Oshima has indicated, is that the end of next week is a "drop dead" deadline (July 30) for the viability of the Doha Round, and with it the effectiveness of the WTO as an institution.

REPORTS IN DETAIL

SPECIAL REPORT

Kerry and Edwards Express Views on International Trade Issues

SUMMARY

Democratic presidential candidate John Kerry chose Senator John Edwards as his running mate during the first week in July. Members of the Democratic Party have characterized the Kerry/Edwards combination as a "dream ticket." Others have criticized Kerry for choosing a vice presidential candidate that has protectionist leanings on trade policy.

At the moment, Senators Kerry and Edwards' positions on trade focus on keeping job growth in the US and including stricter labor and environmental standards in future free trade agreements (FTAs). Senator Kerry has also introduced a vision for strengthening U.S. relations with Latin America and enhancing opportunities for Latinos in the U.S. How Senators Kerry and Edwards present trade-related issues on the democratic platform will become clearer during the Democratic Convention, to be held in Boston, Massachusetts at the end of July.

ANALYSIS

In the following analysis, we review Senator Edwards' position on trade, much of which was revealed during his own presidential campaign for the Democratic nomination; we highlight recent reactions to Edwards' place on the democratic ticket; and we provide a brief comparison of Senator Kerry and Senator Edwards' positions on trade-related issues.

I. Senator Edwards Reveals Positions On Trade; Criticized for Anti-Free Trade Sentiment

Senator John Edwards (D-North Carolina) raised the profile of U.S. international trade policy in this years' campaign for the democratic nomination. Edward's message on trade includes several key points:

- ***Stopping the Export of American Jobs:*** Edwards believes that current U.S. trade policies contribute to the export of American jobs: "Our trade policies have caused 1 million good paying jobs to be shipped overseas because our companies can find cheaper labor and lower standards in another country."

  With regard to CAFTA in particular, Edwards argues: "This trade deal is just a bad deal for American workers. We've already lost more than 3 million private sector jobs under President Bush, and if this trade deal passes, we will lose even more…Congress should reject this deal, and I will work to make sure it does."

To reverse the loss of American jobs overseas, Edwards proposes a 10 percent tax cut for U.S. manufacturers who produce domestically and create jobs. He also supports repeal of tax incentives that encourage companies to move production offshore. He criticizes proposed legislation that would provide a "tax holiday" on foreign profits of multinational corporations.

In efforts to create jobs, Edwards proposes bringing venture capital, small business loans, and business expertise to communities hurt by trade.

- ***Ending China's Currency Manipulation:*** Edwards argues that China's currency manipulation is distorting trade patterns and giving China an unfair advantage in the world market. Edwards also demands China's WTO compliance. Edwards recommends that the US file a formal complaint with the WTO.

- ***Opening Foreign Markets to U.S. Exports:*** Edwards demands that foreign countries abide by their international trade commitments so that American workers and businesses profit from trade agreements. Edwards highlights Chinese biotechnology regulations that have blocked U.S. soybean exports and Mexico's 20 percent tax on soft drinks that has effectively banned U.S. corn syrup exports.

- ***Establishing Labor and Environmental Standards in Trade Negotiations:*** Edwards criticizes both CAFTA and FTAA negotiations for not including labor and environmental standards in the proposed agreements. Rather, U.S. trade agreements have created a corporate "race to the bottom."

Edwards recommends that all trade agreements incorporate the core labor standards outlined by the International Labor Organization, including the right to collective bargaining, prohibition on slave labor, minimum age requirements, and minimum wage standards. Edwards also calls for the establishment of secure mechanisms to enforce these standards.

With regard to the environment, Edwards criticizes Chapter 11 of the NAFTA agreement, which allows foreign investors to challenge U.S. environmental, health, and safety laws in closed hearings. Edwards demands that Chapter 11 not be included in future agreements.

- ***Securing an "International Right to Know" Policy:*** Edwards supports measures requiring companies to disclose their overseas practices with regard to labor and environmental practices and outsourced business. Edwards suggests that products contain labels with this information and that practices be highlighted on billing statements and websites.

- ***Making AIDS Drugs Available World Wide:*** Edwards opposes new patent extensions and limitations on data-sharing, included in the Singapore Free Trade Agreement, that restrict developing countries from importing generic treatments for HIV and AIDS. Edwards criticizes the Administration's efforts to add these restrictions to the CAFTA and FTAA agreements.

II. National Association of Manufacturers Criticizes Edwards

The National Association of Manufacturers, a prominent D.C. trade organization, fears a Kerry/Edwards combination in office could threaten the interests of U.S. businesses and certain industries. Edwards' caricature as the "slick trial lawyer" concerns some businesses with vested interests in market liberalization and minimal regulation.

On July 6, in concert with Senator Kerry's announcement identifying Senator Edwards as his running mate, the National Association of Manufacturers (NAM) issued a press released entitled "Jasinowski [President, NAM] Says Senator Edwards Is Hostile to Manufacturing: Edwards Poses Threat to Business's Ability to Compete." NAM argues that Edwards, as a trial lawyer, brings an inherent bias against innovation and entrepreneurship, which is essential to job creation and healthy competition.

President of NAM, Jerry Jasinowski, suggested that U.S. businesses will view the selection of Edwards as a serious threat and mobilize themselves politically to oppose this ticket. He argues that Edwards has consistently fought against reforms that would help manufacturers gain competitive advantage in world markets. According to Jasinowski, "He [Edwards] has voted against tax cuts, repeal of the absurd OSHA ergonomics rule, a solution to the asbestos crisis, sensible limits on health care liability, repeal of the death tax, development of natural gas resources, terrorism insurance, Medicare reform, and Trade Promotion Authority, to name a few."

NAM Executive Vice President Michael Baroody explained that NAM does not endorse candidates, but provides a voting record on key issues. In his estimation, Kerry and Edwards have scores "in the single digits." In terms of their lack of credibility with manufacturers, the are "in a league by themselves."

III. Senators Kerry and Edwards on Trade Issues

In the following chart, we review the positions and approaches of Senators Kerry and Edwards on several key trade-related issues.

Trade Related Campaign Issues	Senator John Kerry	Senator Edwards
Reviving U.S. Job Growth	• Remove corporate tax incentives for U.S. companies to move offshore. • Support the Crane-Rangel-Hollings legislation, which offers a corporate tax rate reduction to manufacturers who produce goods in the US. • Pass a jobs tax credit for	• Close corporate tax loopholes that give U.S. incentive to move overseas. • Propose a 10 percent tax cut for U.S. manufacturers who produce domestically and create jobs. • Create a new national venture capital fund that will

<table>
<tr><th>Trade Related Campaign Issues</th><th>Senator John Kerry</th><th>Senator Edwards</th></tr>
<tr><td></td><td>manufacturing companies who create jobs above their 12-month employment average.
Oppose the Administration's plan to cut the Manufacturing Extension Partnership (MEP) by 90 percent. Instead, double funding for the MEP and make it easier for small manufacturers to secure loans.</td><td>provide the seed money to a new business in locations where job growth is needed.
Provide tax write-offs to existing businesses and industries that are willing to locate plants or facilities in geographical areas that could benefit from greater job growth.</td></tr>
<tr><td>Increasing U.S. Global Competitiveness</td><td>Offer Trade Adjustment Assistance for workers in transition, better secondary math and science instruction, and community-based grants to retrain workers.
Offer a "College Opportunity Tax Credit" and a tuition reimbursement program to ensure a college education for every American.
Implement a new economic agenda to create 10 million jobs in the first term as president. The three-point agenda would:
Reform the international corporate tax code: A New Jobs Tax Credit would give companies that reinvest their earnings in America a one-year tax holiday.
Increase education and training for jobs in a changing economy.
Restore fiscal discipline and confidence in the American economy.</td><td>Enact an international "right to know" so that consumers know if corporations have moved jobs overseas or engage in abusive environmental and labor standards.
Ensure that renewed Trade Promotion Authority is amended to include:
Aid to displaced textile workers hurt by trade deals and
Increased financing for community college retraining programs.</td></tr>
</table>

Trade Related Campaign Issues	Senator John Kerry	Senator Edwards
China: The Value of the Yuan and WTO Obligations	• Punish countries, such as China, for keeping their currencies undervalued against the U.S. dollar. • The US should file a formal complaint with the WTO against China's currency regime. • Punish China for WTO non-compliance by using WTO remedies.	• Punish China for "manipulating" its currency so as to gain an unfair advantage in the world market. • The U.S. should file a formal complaint with the WTO against China's currency regime.

Trade Negotiations and WTO Compliance	• Enact a six-part plan to improve trade enforcement in the global economy and ensure a level playing field for U.S. businesses. The six parts would:
	  • Use Section 301 of the Trade Act to demand the liberalization of key markets.
	  • Implement a 120-day "top-to-bottom" review of all existing free trade agreements.
	  • Increase resources for trade enforcement and action at the WTO, by doubling the USTR's trade enforcement budget.
	  • Introduce structural reforms to enhance small business and high-tech trade enforcement capacity.
	  • Take forceful efforts to stop illegal currency manipulation.
	  • Strengthen workers' rights and stamp out abusive child labor.
		• Demand that foreign countries abide by international trade commitments, such as those under the WTO, so that American workers and businesses profit from trade agreements.
		• Eliminate Chinese biotechnology regulations that have blocked U.S. soybean exports.
		• Demand that Mexico drop its 20 percent tax on soft drinks that has curtailed U.S. corn syrup exports.

Trade Related Campaign Issues	Senator John Kerry	Senator Edwards
	• Ensure that American workers and businesses profit from trade agreements. • Eliminate Japanese non-tariff barriers on U.S. automobile exports.	
Strengthening Labor and Environmental Standards in Trade Agreements	• Demand that existing and new free trade partners abide by strict labor and environmental commitments. • Investigate China's repression of worker's rights. • Review progress toward internationally recognized core labor rights. • Increase Funding for the Bureau of International Labor Affairs (ILAB) by 50 percent.	• Insist that all trade agreements incorporate the core labor standards outlined by the International Labor Organization, including the right to collective bargaining, prohibition on slave labor, minimum age requirements, and minimum wage standards. • Ensure the establishment of secure mechanisms to enforce these standards. • Do not extend Chapter 11 of the NAFTA agreement to future trade agreements, in order to ensure that foreign investors cannot challenge U.S. environmental, health, and safety laws in closed hearings. • Increase the minimum wage. • Provide greater protection for unionization.

OUTLOOK

As Senators Kerry and Edwards strive to raise the profile of the Democratic ticket, they are expected to coordinate positions on several key issues, including international trade policy. Senator Kerry, who has previously supported trade agreements in the Senate, was critical of free trade policies during the Democratic primary as he faced the protectionist rhetoric of challenger Richard Gephart (D-Missouri). Kerry has now focused his attention on labor and environment issues as core elements of his trade policy.

Senator Edwards has a history of advocating anti-free trade positions, most notably in his campaigning against the North American, Chile, Singapore, and Caribbean free trade agreements and his opposition to extending Trade Promotion Authority (TPA) to the president. These positions have come under intense criticism from the business community and the manufacturing sector.

Senators Kerry and Edwards are aligned on many trade-related issues. For instance, both believe that the US should take an active role in demanding that China revalue its currency and to take the issue to the WTO. The Senators also believe that to best protect U.S. jobs, tax incentives should encourage companies to stay in the US. They would repeal those incentives that encourage companies to move operations offshore. Edward's input into the Democratic trade platform likely will intensify the focus on labor and environmental provisions in trade pacts, an area that Kerry has already highlighted as important. The Democratic trade platform will likely emphasize the interrelationships between trade and worker's rights and trade and U.S. jobs. Nevertheless, Kerry has supported trade agreements in the past. If they are to win the election, their positions on trade might become more moderate.

The Democratic Convention from July 26-29, 2004 in Boston, Massachusetts, could provide the opportunity for Senators Kerry and Edwards to formulate and share with the public a more coherent vision for the U.S. trade agenda. Party officials have indicated that they will release the Democratic Party platform sometime this week or next. Though trade does not generally play a decisive role in U.S. presidential elections, greater emphasis has been placed on this issue during the 2004 campaign season, particularly as it relates to the U.S. economy and jobs.

UNITED STATES

Outlook for TPA Extension Remains Positive

SUMMARY

When Congress granted the President Trade Promotion Authority (TPA) in the Trade Act of 2002, it set July 1, 2005 as a preliminary date for the expiration of the authority. The Trade Act of 2002 provides for a two-year extension. The process for obtaining an extension must start no later than March 1, 2005, when the President is required to submit a report on the use of TPA and any request for an extension. Members of the trade community, including staff on the relevant Congressional committees expect Congress overwhelmingly to support extending TPA until July 1, 2007.

A change in the occupant of the White House following the November 2004 election is unlikely to change the prospects for TPA renewal. Senator Kerry was criticized in May 2004 for his failure to formally endorse an extension of TPA, but has since expressed his intention to seek one if elected. President Bush has expressed his intention to seek an extension of TPA.

The renewal of TPA will give breathing space to ongoing negotiations between the United States and Thailand, the Andean Community and the Southern African Customs Union (SACU). The Central America Free Trade Agreement (CAFTA), having already been signed, will qualify for consideration under TPA regardless of when the President submits implementing legislation to Congress. In addition, the slow progress made in the Doha Development round and the Free Trade Area of the Americas make the original completion of both agreements in early 2005 unrealistic. Renewing TPA will be essential if the United States hopes to maintain credibility during the negotiations.

ANALYSIS

Under the Trade Act of 2002, TPA will expire on July 1, 2005, unless the President, prior to March 1, 2005 seeks its extension. We review here the extension process for TPA, the potential impact of a Kerry win in the November 2004 election on TPA, and the relationship between TPA and ongoing free trade negotiations.

I. TPA Renewal Automatic Absent Disapproval by the House or Senate

A. <u>Renewal Process</u>

i. The process for renewing TPA must start on or prior to March 1, 2005, the date by which the President must submit to Congress a request for the extension of TPA.

ii. The following items must accompany the President's request: i) a report discussing completed and ongoing free trade negotiations, ii) a statement describing how the policies and priorities outlined in the TPA title of the Trade Act of 2002 have been met, iii) a schedule for the completion of ongoing negotiations, and iv) a statement explaining why an extension is needed to complete ongoing negotiations.

iii. In addition to the report submitted by the President, the Advisory Committee for Trade Policy and Negotiations, and the International Trade Commission are required to submit reports prior to May 1, 2005 on the use of TPA, and recommendations as to whether TPA should be extended.

iv. The President's request for renewal is automatically granted, unless either the House or Senate adopts a resolution of disapproval prior to June 30, 2005. Such as resolution must first be approved by the Ways and Means Committee in the case of the House, and the Finance Committee in the case of the Senate. The resolution, if approved by the appropriate committee, needs a simple majority to be adopted. Adoption by either the House or Senate is sufficient to block extension of TPA.

B. Congressional Support for TPA Renewal Strong; Committees Have Power to Dismiss Disapproval Resolutions

Majority and minority staffs on the House Ways and Means Committee, and Senate Finance Committee have expressed confidence that a resolution of disapproval is unlikely to be adopted by either committee. Thus, even if a resolution of disapproval is introduced (very likely) – both Committees have the power to dismiss the resolution before it gets to a full floor vote.

The Senate has traditionally been a stronger supporter of free trade than the House, and both Senator Grassley (R-Iowa), Chairman of the Senate Finance Committee, and Baucus (D-Montana), Ranking Member of the Senate Finance Committee, have supported passage of the U.S.-Chile and U.S.-Singapore FTAs. Neither Grassley nor Baucus has indicated that they are prepared to support blocking the extension of TPA.

The House of Representatives, despite being more reticent about free trade, is unlikely to adopt a disapproval resolution, particularly given the strong support of free trade by the members of the Ways and Means Committee. A change in the control of the House by the Democrats could alter this calculus.

II. Kerry Victory Unlikely to Produce Lapse in TPA

A victory by Democratic presidential candidate Senator John Kerry (D-Massachusetts) in the November 2004 election is unlikely to lead to a lapse of TPA. In early May 2004, U.S. Trade Representative Robert Zoellick criticized the Kerry campaign for refusing to say whether the Senator would seek an extension of TPA. Senator Kerry has yet to articulate a formal position, though he did express support for TPA during consideration of the Trade Act of 2002.

Presidents have generally supported TPA because it grants the executive branch greater prerogatives and flexibility. President Bush has already expressed his intention to seek a renewal of TPA. For Senator Kerry, TPA extension would facilitate his stated goal of renegotiating CAFTA. That way, Congress could not undo changes made to the agreement. Congressmen Levin (D-Michigan) has suggested that while Kerry may seek changes to TPA, he is not against it.

III. TPA Extension Would Give Breathing Room to FTA Negotiations

Extension of TPA through July 1, 2007 would give breathing room to several ongoing FTA negotiations. USTR has expressed a desire to complete negotiations with Thailand, the Andean Community and the SACU prior to June 2005 because of the possible expiry of TPA. Under the Trade Act of 2002, free trade negotiations that are not complete prior to the expiration of TPA are not eligible for consideration by Congress under the TPA.

Negotiations with Thailand and Andean Community are expected to be difficult given the number of sensitive constituencies at stake. Negotiations between the US and Central American countries stalled over sensitive sectors such as textiles, agriculture and telecommunications, forcing both sides to delay completion of the agreement. It is possible that the Administration will need to extend the deadline for the negotiations with Thailand and the Andean countries. Extending TPA would reduce pressure on negotiators to generate an agreement prior to June 2005, allowing them time to find solutions for sensitive constituencies.

In addition to the ongoing bilateral FTA process, the Doha Development round and the Free Trade Area of the Americas negotiations continue. Both multilateral negotiations were originally scheduled for completion in early 2005. However, slow progress in the negotiations has made achieving any deadline in 2005 difficult. Extension of TPA would be essential to maintain U.S. credibility. Absence of TPA would allow Congress to modify the implementing legislation for any agreement reached within the World Trade Organization, or the FTAA. Such alternations could require the US to renegotiate agreements based on changes proposed by Congress. This situation would seriously compromise the ability of the US to negotiate effectively.

OUTLOOK

The extensive array of bilateral and multilateral trade agreements makes extension of TPA essential for the United States.

No serious opposition to extension of TPA until July 2007 has emerged, and Members of Congress, and their staffs seem confident that Congress will extend TPA by a wide margin. However, analysts expect some opposition from anti-free trade Members of Congress. Most analysts expect that the resolution of disapproval will be introduced, although the House Ways and Means and Senate Finance Committees are unlikely to approve such a resolution. The November 2004 elections could alter the dynamic, especially if the composition of the House of Representatives undergoes significant change. A change in the occupant of the White House alone is unlikely to jeopardize TPA renewal.

Trade-Related Appropriations and Authorization Bills Move Forward in Congress

SUMMARY

As the summer recess approaches, scheduled to begin on July 23, 2004, Congress remains focused on completion of the 13 annual appropriations bills needed to fund the Federal Government for the fiscal year starting on October 1, 2004 (FY2005). The summer nominating conventions and the Fall elections leave Congress with a limited number of legislative days in which to complete the appropriations process. It is possible that Congress will fund some federal agencies through a continuing resolution (CR), which would likely limit agencies to FY2004 budget levels.

Trade related appropriations bills have made some progress, particularly the Department of Homeland Security appropriations bill. Thus far, the President's FY2005 budget requests for trade related agencies have been preserved, and little opposition has emerged.

In addition to the appropriations bills, the House continues to make progress on the Customs Border Security and Trade Agencies Authorization Act of 2004 (H.R. 4418). The biannual authorization bill for customs and the trade related agencies sets out appropriations targets and policy priorities for FY2005 and FY2006.

ANALYSIS

We review here the status of appropriations and authorization bills for the U.S. trade related agencies:

I. Homeland Security Bill Clears House, Awaits Senate Consideration

The Department of Homeland Security Appropriations Act of 2005 (H.R. 4567, S. 2537) includes appropriations for the operation of the Bureau of Customs and Border Protection (CBP) and Bureau of Immigration and Customs Enforcement (ICE). The President's FY2005 budget submission to Congress proposed increases in funding for several trade related programs operated by CBP:

- ***Customs-Trade Partnership Against Terrorism (C-TPAT):*** The Committee recommended $37,828,000, an increase of $15, 215,000 from FY 2004, for an expansion of the program, to include an additional 120 supply chain officers to work with shippers and manufacturers to establish and certify security within their own operations and facilities.

- ***Container Security Initiative (CSI)***: The Committee recommended $126,096,000, an increase of $25 million from FY 2004, to expand the capacity of CSI to reach important ports in locations such as Central America and the Caribbean.

- ***Automated Targeting System (ATS)***: The Committee requested funds of $37, 493,000, up $20,623,000 from FY 2004 to enhance ATS and expand the National Targeting Center, which develops and uses ATS.

The Committee also directed CBP to report by November 1, 2004 on its plans to improve this targeting system, and include specific milestones and timeframes.

- ***Non-Intrusive Inspection and Radiation Detection:*** The Committee recommended $115, 159,000, a total increase of $50 million from FY 2004, to fund operations and maintenance of existing inspection systems, but not support replacement or additional systems.

- ***Integrated Surveillance Intelligence System (ISIS):*** The Committee requested an increase of $64,162,000 for Integrated Surveillance Intelligence System (ISIS), to bring the total funding for ISIS to $87,162,000, with the hopes of larger future investments. This increase in funding is to enhance security between ports of entry, especially through remote video surveillance (RVS) and intelligent computer assisted detection (ICAD).

- ***Automated Commercial Environment (ACE):*** The Committee recommended $321 million in funding for FY 2005, believing that ACE and CBP modernization should be integrated with the DHS information system and border security technology, CSI, and ATS.

The House and Senate have adopted their respective versions of the DHS appropriations bill, and the bill awaits consideration by the conference committee to resolve differences. On trade related aspects, few differences exist between the House and Senate versions. The House bill contains an additional $100 million for non-intrusive detection equipment, whereas the Senate version provides for only $50 million.

The conference committee has set no schedule for consideration of the two bills. Senate Democrats have used procedural rules to prevent the appointment of Senate conferees on a number of important bills, most recently on the repeal of the Extraterritorial Income Exclusion Act (FSC/ETI). Senate Democrats have complained that the Republican-dominated conference committees do not sufficiently consider their views, and use slender majorities in both houses to adopt legislation. It is unclear if Democrats will block the appointment of conferees for the DHS appropriations bill.

II. House Ways and Means Clears Customs and Trade Agencies Reauthorization

On July 14, 2004, the House of Representatives approved by 341-85 the Customs Border Security and Trade Agencies Authorization Act of 2004 (H.R. 4418), after the House Ways and Means Committee unanimously approved the Act on July 8, 2004. The biannual authorization sets budget levels for CBP, ICE and trade related agencies including the U.S. Trade Representative (USTR) and the International Trade Commission (ITC). In addition, the bill outlines policy priorities for the agencies, as well as requires various reports and reviews of existing programs.

Despite the unanimous approval, hearings held in June reflected growing congressional concern over CBP's collection of anti-dumping and countervailing duties (AD/CVD). On March 19, 2004, CBP released a report stating that $130 million in AD/CVD had gone uncollected during FY2003; $103 million of this amount coming from the import of Chinese products. CBP's failure to collect the AD/CVD has been attributed to bonding policies that allow new shippers to pay a fraction of the duties, and then avoid them later by closing the company or declaring bankruptcy. In addition, CBP has taken up to 18 months to conclude reviews of new shippers, resulting in delayed imposition of AD/CVD.

Scrutiny by Congress, and beneficiaries of AD/CVD payouts under the Continuing Dumping Subsidy Offset Act (Byrd Amendment), has raised the profile CBP's failure to collect dumping duties. During the July 8th markup of H.R. 4418, Congressmen Neal (D-Massachusetts) introduced, and then withdrew an amendment that would scrap the use of bonds for AD/CVD and replace it with a cash payment system. House Ways and Means Chairman Bill Thomas (R-California) noted the seriousness of the issues, urging CBP to correct the "poor business practices" that have led to the failure to collect dumping duties. CBP has indicated that it plans to raise the bond requirements for importers to assure greater collection of duties.

The bill sets the following budget levels for the trade related agencies, which are in line with the President's FY2005 budget submission:

Agency	FY2005 Budget Authorization	FY2006 Budget Authorization
Customs and Border Protection	$6.203 billion	$6.470 billion
Immigration and Customs Enforcement	$4.011 billion	$4.336 billion
U.S. Trade Representative	$39.552 million + $2 million earmarked	$39.552 million + $2 million earmarked
International Trade Commission	$61.700 million	$65.278 million

The funding level for USTR represents a decrease from the $41.5 million appropriated in FY2004. However, the bill authorizes an addition $2 million for the hiring of staff in the Office of Genera Counsel or the Office of Monitoring and Enforcement. During consideration of the bill at the subcommittee and committee levels, Congressmen Levin (D-Michigan) sought to have the additional $2 million targeted for enforcement against China. However, the proposal was defeated at both levels.

The Senate has yet to take up a bill to reauthorize CBP, ICE and the trade related agencies. It is likely that it will consider the House version if adopted, rather than develop new legislation.

III. House Adopts Commerce State, Justice Appropriations Act

On July 8, 2004 the House of Representatives approved the Commerce, State and Justice (CJS) Appropriations Act of 2004 (H.R. 4754). The bill makes appropriations for the

Department of Commerce, as well as related agencies such as USTR. The funding levels adopted in the CJS appropriations bill reflect the President's FY2005 request.

The House bill provides for $401 million for the International Trade Administration (ITA) within Commerce, and does not earmark any funds specifically for monitoring and enforcing compliance against China. Various Representatives have expressed concerns regarding the need for stronger monitoring and enforcement efforts related to China, which are included in H. Rept. 108-576, the accompanying report for H.R. 4754.

The FY2005 House bill does not contain a requirement for USTR to defend the legality of the Byrd Amendment before the World Trade Organization. The past three CJS appropriations bills have required USTR to do so.

The Senate has yet to introduce its version of the CJS appropriations bill and has not indicated when it might do so. Though the bill moved quickly through the House, controversy over provisions related to the Federal Communications Commission threaten to delay the bill in the Senate.

OUTLOOK

With legislative days in short supply, it is becoming increasingly likely that Congress will not complete work on all 13 appropriations bills prior to the end of the fiscal year. The upcoming elections make achieving compromise on the spending measures even less likely. Passage of the DHS appropriations bill is possible if Senate Democrats agree to the appointment of conferees. The President has placed a high priority on completing at least the Defense and DHS appropriations bills prior to September. Should Congress find itself unable to complete the remaining 11 bills, it will likely consider passage of a continuing resolution (CR) to fund the government until after the November election. Such a move would likely freeze budgets at FY2004 levels. Congress is expected to meet in September and is scheduled to adjourn for the election by October 1, 2004.

Notwithstanding concerns about China and the collection of AD/CVD, little controversy has emerged over the President's FY2005 budget request for Customs and trade related agencies. With the exception of USTR, all trade related agencies received modest increases in their budgets, with the highest budget increases reserved for border security enhancements. The tight legislative calendar is the most significant impediment to passage of trade-related appropriations bills this year.

U.S. Signs TIFAs With Mongolia and Oman; Announces TIFA Negotiations With Afghanistan

SUMMARY

We want to alert you to the following developments:

- On July 15, 2004, the United States signed a bilateral Trade and Investment Framework Agreement (TIFA) with Mongolia.

- On July 7, 2004, the United States signed a TIFA with Oman.

- On June 15, 2004, President Bush and Afghani President Hamid Karzai announced that the U.S. and Afghanistan will pursue a TIFA.

ANALYSIS

I. U.S. Signs TIFA With Mongolia

On July 15, 2004, the United States signed a bilateral Trade and Investment Framework Agreement (TIFA) with Mongolia. The TIFA creates a Joint Council on Trade and Investment, in which both parties will cooperate to enhance and liberalize trade and investment at the bilateral, regional, and multilateral levels. The Council will consider issues such as intellectual property, non-tariff barriers, and labor and environmental standards.

Deputy U.S. Trade Representative Josette Sheeran Shiner and Mongolia's Deputy Minister for Industry and Trade Orcher Erdenee signed the agreement. According to Shiner, "the TIFA will not only deepen our economic relationship with Mongolia, but will also complement our existing TIFA with the Central Asian states to create stronger trade ties in the region."

II. U.S. Signs TIFA With Oman; Announces TIFA Negotiations With Afghanistan

On July 7, 2004, the United States signed a TIFA with Oman. Oman is the last country of the Gulf Cooperation Council (GCC) to sign a TIFA with the U.S., after Bahrain, Qatar, Saudi Arabia, and the United Arab Emirates. In the Middle East, the U.S. also has TIFAs with Algeria, Egypt, Kuwait, Tunisia and Yemen. The TIFAs 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.

III. U.S. Announces TIFA Negotiations With Afghanistan

On June 15, 2004, President Bush and Afghani President Hamid Karzai announced that the U.S. and Afghanistan will pursue a TIFA as a way to promote bilateral economic ties.

OUTLOOK

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

United States Highlights

USTR Publishes Request for Special 301 Comments

On July 13, 2004, the United States Trade Representative (USTR) published a notice in the Federal Register requesting public comments on the policies and practices relevant under Section 182 ("Special 301") of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), which requires USTR to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Under this Act, the USTR must also determine which countries to classify as Priority Foreign Countries.

Comments must be submitted to USTR by August 6, 2004.

U.S. and China Resolve Dispute Regarding China's VAT Policy

On July 8, 2004, U.S. Trade Representative (USTR) Robert Zoellick announced that the U.S. and China had resolved their dispute over China's value added tax (VAT) policy on integrated circuits. The U.S. filed the first-ever case against China at the World Trade Organization (WTO) in March 2004, alleging that China's partial rebate of the 17% VAT on integrated circuits (ICs) to domestic producers constituted discrimination under Article III of the General Agreement on Tariffs and Trade (GATT). Prior to the agreement on this dispute, China rebated to domestic producers of ICs up to 80% of the VAT on ICs.

The agreement reached between the U.S. and China will require China to immediately stop certifying new domestic producers as eligible for the rebate. Those Chinese producers already benefiting from the rebate may continue to do so until April 1, 2005, when all VAT refunds must cease. Industry groups, such as the Semiconductor Industry Association (SIA) had urged the Chinese government to reduce or eliminate the VAT for all producers of ICs sold in China. The agreement makes no stipulation as to the level of VAT charged on ICs in China.

Free Trade Agreements

House and Senate Approve U.S.-Australia and U.S.-Morocco Free Trade Agreements

SUMMARY

Congress, by a strong bipartisan majority, has adopted implementing legislation for the U.S.-Australia and U.S.-Morocco Free Trade Agreements (FTAs).

The House overwhelming approved the legislation on the Australia FTA by a vote of 314 to 109 on July 14, 2004. The Senate approved the legislation one day later by a vote of 80 to 16.

The Senate approved the U.S.-Morocco FTA on July 21, 2004 with a vote of 85 to 13 and the House approved it on July 22, 2004 with a vote of 323 to 99.

Adoption of the Australia and Morocco FTAs is likely the last major trade action Congress will take prior to the Fall Election.

ANALYSIS

We review here highlights of the two agreements as they passed through the House and the Senate.

I. House and Senate Express Strong Support for US-Australia FTA

The Australian FTA implementing legislation is the first agreement considered by Congress since passage of the U.S.-Chile and U.S.-Singapore FTA implementing legislation in July 2003, and represents a victory for the President's competitive liberalization policy. Under the Australia FTA, the US will gain a major new market for its manufactured goods, including aircraft, autos, and medical equipment, which already account for 93 percent of U.S. exports to Australia. U.S. industrial goods exports to Australia are estimated to grow by $2 billion a year under the agreement.

Opponents in the Senate argued that the bill's language could undermine congressional efforts to legalize importation of cheaper drugs. Senator John McCain (R-Arizona) criticized the inclusion of health care issues in trade agreements, though he did vote in support of the legislation. Others, led by Senator Conrad (D-N.Dakota), criticized the bill's provisions on beef and dairy, arguing that the FTA does not adequately protect these sectors from a possible flood of Australian imports.

Upon Senate approval of the bill, U.S. Trade Representative (USTR) Robert Zoellick released a statement commending senators of both parties who supported passage of the legislation, which he termed "a 21st century, state-of-the-art agreement that strengthens America's position within the modern globalized economy." Zoellick referred to the agreement as the "Manufacturing FTA", because 99 percent of the manufactured goods traded between the two countries will be duty free immediately upon entry into force of the FTA.

II. House and Senate Express Support for US-Morocco FTA

The House and Senate showed strong bipartisan support in approving the US-Morocco FTA implementing legislation, which many believe creates an important US trading partner in the region. In 2003, Morocco and the US engaged in two-way trade of approximately $860 million; the US had a trade surplus of $66.5 million with Morocco. Upon implementation of the U.S.-Morocco FTA, 95 percent of consumer and industrial products will become duty-free, which is the most favorable terms on consumer and manufacturing goods that the US has ever achieved in an FTA with a developing country.

Democrats in the House and Senate that had taken issue with labor and environmental provisions and prescription drug provisions indicated that the agreement language had eased their concerns. Ways and Means Committee ranking Member Charles Rangel (D-New York) suggested that the reforms made by Morocco on labor and environmental standards be a "model for developing countries." Senate Finance ranking Member Max Baucus (D-Montana) echoed this sentiment, saying that the agreement "sets a new standard for U.S. trade agreements with developing countries." Democratic presidential candidate Senator Kerry (D-Massachusetts) voted in favor of the agreement during the Senate Finance vote by proxy.

Nonetheless, concerns over the agreement persisted in both chambers. Representative Rangel and trade subcommittee ranking Member Sander Levin (D-Michigan) criticized the Bush Administration for not demanding tougher labor and environmental standards among the U.S. FTA partners. Others raised concern that U.S. patent regulations could hinder Morocco's ability to offer low-cost generic drugs to its population. Morocco's rights to access low-cost drugs under the World Trade Organizations agreement on TRIPS and public health assuaged many of these concerns.

OUTLOOK

Approval of the Australia and Morocco FTAs clears the way for signature by the President. Both FTAs are expected to enter into force on January 1, 2005. The Australian Parliament has expressed some opposition to the FTA, however Prime Minister Howard has expressed confidence the deal will be approved.

Congress will now break for its summer recess, and will return in early September. The key issue in September will be the passage of FY2005 appropriations bills. The limited number of legislative days prior to the election will likely result in little if any time for consideration of trade issues.

Senator Baucus Discusses the Future of Free Trade Agreements

SUMMARY

On July 13, 2004, the Global Business Dialogue hosted a discussion with Senator Max Baucus (D-Montana), ranking member of the Senate Finance Committee. Senator Baucus addressed deficiencies in the Administration's approach to Free Trade Agreements (FTAs), particularly with respect to the selection of free trade partners. Baucus also discussed the important of labor and environment standards in trade agreements, and warned that without such improvements, the Central American Free Trade Agreement (CAFTA) was not likely to gain Congressional approval.

ANALYSIS

Senator Baucus focused his comments on how the Administration should approach FTAs in order to promote the highest labor and environmental standards and secure agreements that offer the largest commercial benefit to the US. Senator Baucus highlighted three areas that should be considered when proceeding with any FTA: (i) the substance of agreements; (ii) the drafting and implementation process; and (iii) the relationship between trade policy and jobs.

I. Baucus Emphasizes Labor and Environment and Capacity Building

In terms of the substance of current and future FTAs, Senator Baucus underlined the need to focus on labor and environmental issues, alongside effective capacity-building initiatives. He criticized the Administration's lack of attention to these critical elements in its pursuit of FTAs.

With regard to CAFTA, Senator Baucus argued that it and future FTAs would gain the widespread support that the Singapore and Chile agreements enjoyed if strong chapters on labor and environment were included. Senator Baucus claimed that the Bush Administration has opposed stricter rules, even when partner countries would agree to higher standards. Should improved standards not be included in CAFTA and future FTAs, the U.S. runs the risk of stalling its trade agenda. Senator Baucus highlighted the CAFTA Citizen Submission Process as one example of ways in which the U.S. can move beyond the Singapore and Chile models on labor and the environment.

Senator Baucus emphasized the important of capacity building in trade agreements. For these projects to be successful, they must be long term in nature; formulated against defined benchmarks; subject to objective monitoring; and receive increased funding. Advancements in this area will greatly enhance the U.S.'s ability to make progress on labor and environmental issues.

II. Senator Baucus Criticizes the Administration's Approach to the FTA Process

Senator Baucus argued that the number and diversity of people involved in the drafting of recent FTAs has diminished considerably compared to the participation in the Chile and Singapore FTA processes. Baucus blames the Administration for thinking that "corners can be cut," and subsequently involving fewer parties to work on the text of agreements.

According to Senator Baucus, the CAFTA implementing process will be more complicated than that of past FTAs. He suspects that Members of Congress will offer many amendments during the mock markups of the implementing bill.

III. Senator Baucus Draws Linkage Between Trade Policy and Jobs

As has been the rhetoric for much of the year, Senator Baucus argued that the Administration and Congress must view trade policy through the lens of jobs growth. Senator Baucus highlighted three ways in which trade policy can work in the interest of American jobs:

- ***Commercial significance* –** The U.S. must negotiate with countries that present lucrative market opportunities for the American workers and businesses. Some recent agreements, he argued, have served the interest of foreign policy rather than commercial opportunity.

- ***Ensure agricultural support* –** Trade agreements must be in the interest the agricultural community. Once a strong supporter of market liberalization, this sector has become skeptical of trade. Trade agreements must ensure new markets for farmers.

- ***Stronger enforcement* –**The U.S. must work harder to enforce existing trade agreements. The U.S must also bring more cases to the WTO, especially to protect U.S. intellectual property rights.

OUTLOOK

In his discussion, Senator Baucus reinforced his continued support for forward movement on U.S. FTA negotiations. However, he also expressed dissatisfaction over the Bush Administration's current approach, which in his view has been lackadaisical in demanding higher labor and environmental standards. Senator Baucus also asserted that stricter language in these areas will help partner countries raise their standards. Likewise, he warned that failure to strengthen these provisions will undermine support in Congress for agreements like CAFTA, and other trade liberalization initiatives.

Free Trade Agreements Highlights

Agencies Seek Comments on Labor Rights in Panama, Thailand, Andean Countries and SACU Countries

On June 23, 2004, the U.S. Department of Labor, the Office of the United States Trade Representative (USTR), and the State Department published notices in the Federal Register requesting public comments to assist them in preparing reports on labor rights in the following countries with whom the United States is negotiating a Free Trade Agreement (FTA):

- Panama (69 FR 35060);
- Thailand (69 FR 35062);
- The Andean countries Bolivia, Colombia, Ecuador, and Peru (69 FR 35063);
- Southern African Customs Union (SACU) countries Botswana, Lesotho, Namibia, South Africa, and Swaziland (69 FR 35064).

The reports will describe the extent to which these countries have effective laws governing exploitative child labor. The reports are being prepared as part of the special procedures for approval and implementation of trade agreements as set forth in the Trade Act of 2002.

In particular, the agencies seek comments on (i) the labor laws in the respective countries, (ii) the situation with respect to core labor standards, (iii) the steps taken to comply with International Labor Organization (ILO) Convention on the worst forms of child labor, and (iv) the nature and extent of exploitative child labor.

TPSC Requests Comments on Interim Environmental Review U.S.-Panama FTA

On July 12, 2004, the United States Trade Representative (USTR) published a notice in the Federal Register (69 FR 41876), announcing that the Trade Policy Staff Committee (TPSC), an interagency body chaired by USTR, is requesting public comments on the interim environmental review of the proposed U.S.-Panama Free Trade Agreement (FTA). This review focuses on the environmental impact of the FTA in the United States, and also takes into account global and transboundary environment impacts.

The comments are due by July 30, 2004.

Customs

CBP Amends Bond Directive for Certain Goods Subject to AD/CVD

SUMMARY

The Bureau of Customs and Border Protection (CBP) has issued an amendment to existing directives that govern the bond requirements for certain imported goods subject to antidumping or countervailing duties (AD/CVD). The amendment will require higher bonds to be posted by importers of agricultural and aquaculture products. The change in bond requirements is the result of Congressional pressure on CBP to better enforce U.S. trade laws, and increase disbursements under the Continuing Dumping and Subsidy Offset Act (Byrd Amendment).

ANALYSIS

CBP's decision to amend the bond requirements for certain goods subject to AD/CVD comes after months of pressure from Congress to better collect the duties. We review here the pressures that motivated CBP to amend the bond directive, and the new requirements under the amendment.

I. Congressional Pressure on CBP Chief Motivation for Rule Change

In March 2004, CBP issued a report on the collection and distribution of monies under the Byrd Amendment. The report noted that over $130 million in AD/CVD went uncollected in FY2003. The report provoked outrage from several members of Congress, who claim that CBP's failure to collect the duties is undermining the ability of US firms to compete. CBP attributed its failure to collect the duties to low bond requirements for new importers. Importers who faced duty orders by the Commerce department did not have to increase the size of their bond with CBP for goods subject to AD/CVD.

Congressional pressure on CBP mounted in May and June as the House began consideration of the biannual reauthorization legislation for CBP. During hearings before the Subcommittee on Trade, and full Ways and Means Committee, several representatives chastised CBP for its failed business practices that were giving rise to millions in uncollected duties. At the full committee markup of the Customs Border Security and Trade Agency Authorization Act of 2004 (H.R. 4418), Congressmen Neal (D-Massachusetts) offered an amendment to eliminate the use bonds to cover AD/CVD. Though the amendment was withdrawn, committee chairman Bill Thomas (R-California) vowed to include language in the committee's report on the need for CBP to strengthen its duty collection practices.

II. Amendment Raises Bond Requirements

Under CBP's amended bond directive, importers will now have to increase their entry bonds immediately upon the issuance of an AD/CVD order by the Department of Commerce (DoC). The size of the entry bond will be based on the importer's import value for the previous 12 months for the good subject to a DoC order. New importers will also face increased bonding requirements, based on an estimated annual value of the goods subject to AD/CVD. Sudden changes in the declared values or claimed countries of origin may lead

CBP to find the existence of an increased risk and could lead to further increases in the size of bond required. The amended bond directive applies only to agriculture and aquaculture products.

OUTLOOK

The amended bond directive is aimed primarily and assuaging the Congressional critics of CBP. CBP officials have tried to downplay aspects of the March 2004 report on collection of duties. Officials have noted that the bankruptcy of a major bonding company was a significant factor in explaining the $130 million in uncollected duties. CBP has vowed to conduct periodic reviews to ensure sufficiency of bonds for AD/CVD payments, and could potentially increase requirements for non-agricultural products.

US – EUROPEAN UNION

US and EU Pledge to Strengthen Transatlantic Economic Partnership at Annual Summit

SUMMARY

On June 26, 2004, European Commission President Romano Prodi and Irish Prime Minister and European Council President Bertie Ahern met with U.S. President George W. Bush at the annual EU-US Summit in County Clare, Ireland. A large part of the discussions focused on economic issues, and at the end of the Summit both parties issued a joint statement wherein they pledged to strengthen the Transatlantic Economic Partnership.

Recognizing that regulatory differences were the most significant barriers to transatlantic trade, the parties also announced the "U.S.-EU Regulatory Cooperation Roadmap". This roadmap provides a framework for cooperation and aims order to promote better quality regulation, minimize regulatory divergences, and facilitate transatlantic trade.

ANALYSIS

I. EU and US Pledge to Strengthen Transatlantic Economic Partnership

On June 26, 2004, European Commission President Romano Prodi and Irish Prime Minister and European Council President Bertie Ahern met with U.S. President George W. Bush at the annual EU-US Summit in County Clare, Ireland. The European delegation further consisted of EU Trade Commissioner Pascal Lamy and EU External Relations Commissioner Chris Patten, among others. In remarks after the Summit[1], Ahern noted that discussions had been "extremely productive" and had focused to a large extent on economic issues.

At the end of the Summit, the EU and the US issued a joint statement[2], wherein they pledged that in order to strengthen the Transatlantic Economic Partnership, they would:

- ***Increase cooperation toward a successful conclusion of the negotiations for the World Trade Organization's (WTO) Doha Development Agenda (DDA):*** both parties directed their ministers to complete a negotiating framework by the end of July, stressing the need to focus on the core issues of the DDA, and particularly on agriculture.

- ***Increase cooperation under the "Positive Economic Agenda" (PEA):*** launched at the EU-US Summit on May 2, 2002, the PEA establishes a framework in which the EU and the US can increase the effectiveness of their cooperation in specific sectors such as financial markets, electronic customs, or health and phytosanitary issues.

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1 http://www.whitehouse.gov/news/releases/2004/06/20040626-16.html

2 http://www.whitehouse.gov/news/releases/2004/06/20040626-14.html

- ***Increase cooperation with regard to trade disputes:*** Bush announced that he intends to comply with final WTO rulings against U.S. measures. As an example, he said that the Administration was working closely with Congress to pass legislation that would repeal the FSC/ETI bill.

- ***Launch a comprehensive review of transatlantic economic relations:*** the review should help to develop a strategy to maximize investment, reduce barriers, and enhance economic growth.

- ***Urge private stakeholders to provide ideas:*** the statement urged businesses, legislators, non-governmental organizations, and others to provide concrete ideas on how to (i) expand transatlantic trade, (ii) spur innovation and job creation, and (iii) increase the competitive potential of their companies.

II. EU and US Agree to Increase Regulatory Cooperation in Numerous Areas

Recognizing that regulatory differences were the most significant barriers to transatlantic trade, the parties also announced the "U.S.-EU Regulatory Cooperation Roadmap"[3], which provides a framework for cooperation in the following areas, among others:

- Pharmaceuticals;
- Auto safety;
- Information and communications technology standards;
- Cosmetics;
- Consumer product safety;
- Chemicals;
- Nutritional labeling;
- Eco-design of electrical/electronic products; and
- Health and consumer protection.

The roadmap builds on the 2002 "U.S.-EU Guidelines for Regulatory Cooperation and Transparency", wherein the European Commission made the commitment to increase the transparency of its regulatory process. Through targeted U.S.-EU regulatory consultations, the roadmap aims to promote better quality regulation, minimize regulatory divergences, and facilitate transatlantic trade.

[3] http://www.ustr.gov/regions/eu-med/westeur/2004-06-26-roadmap.pdf

OUTLOOK

The US announced that as of July 2004, they would hold regular public dialogues with private stakeholders to discuss the transatlantic economic relationship. The EU and the US hope to conclude the review of the transatlantic economic relations by the next EU-US Summit in 2005, where it would be presented.

US –LATIN AMERICA

Kerry Announces Plan to Strengthen Relations with Latin America

SUMMARY

At the annual convention of the National Association of Latino Elected and Appointed Officials (NALEO) on June 26, 2004, presumed Democratic presidential candidate John Kerry introduced his vision for strengthening U.S. relations with Latin America and enhancing opportunities for Latinos in the U.S.

In his speech, Senator Kerry attacked the Bush administration for failing to promote democracy and fair trade in the region. As president, Kerry would reverse this pattern and pay close attention to the economic and political needs of the region. Kerry outlined his plan for the region, which included creating a "Community of the Americas," strengthening democracy, promoting free and fair trade, and reforming America's immigration laws.

ANALYSIS

We review here the major points of Senator Kerry's plan to strengthen U.S. engagement in Latin America.

I. Senator Kerry Promises to Create a New "Community of the Americas"

Building upon the Summit of the America's process, Kerry will create a partnership with Latin America—the "Community of the Americas"—based on mutual respect and cooperation between the two neighboring regions. Key initiatives included in this partnership would:

- ***Promote Educational Exchanges:*** Kerry plans to triple the current number of educational exchanges, and will encourage U.S. colleges to provide tuition waivers for foreign students in exchange for internships overseas for U.S. students;
- ***Reduce Cost of Remittances:*** Kerry will reduce the costs incurred on immigrants when they send money earned in the US back home to Latin America;
- ***Create a Social Investment and Development Fund:*** Kerry will support a $500 million fund designed to strengthen democracy and combat poverty by promoting education, healthcare, and economic development;
- ***Create Economic Opportunities for the Region's Poor:*** Kerry plans to direct additional resources to vocational training and micro enterprise training and funding in order to make the poor "stakeholders for reform;"
- ***Improve Cross Border Transport:*** Kerry will work with Mexico and Canada to develop a transportation "masterplan" that will include private sector funding; and

- ***Form a "North American Security Perimeter":*** Kerry plans to work with enforcement officials across U.S. borders to harmonize customs procedures, immigration policies, and travel documentation.

II. Kerry Proposes Initiatives to Strengthen Democracy

In his efforts to alleviate poverty and inequality, Senator Kerry will work to promote strong democratic states with transparent rules and procedures and respect for rule of law in Latin America. To forward this objective, Kerry will:

- ***Establish a Council for Democracy:*** Propose establishment of a panel of distinguished leaders under the auspices of the Organization of American States (OAS) to resolve crises in a peaceful and democratic manner;

- ***Triple U.S. Funds to the National Endowment for Democracy:*** Allocate additional funds to the National Endowment for Democracy (NED) to assist political parties in their grassroots efforts to broaden party participation;

- ***Maintain Neutrality:*** Ensure that the US will remain neutral in regional political processes;

- ***Support Democratically Elected Leaders:*** Encourage U.S. support for governments that uphold democratic principles in selecting their leaders. Kerry criticizes the Bush administration's actions with regard to Aristide in Haiti and Chavez in Venezuela;

- ***Support Peaceful Opposition:*** Support legitimate democratic dissent as part of a well-functioning democratic process; and

- ***Work with U.S. Allies:*** Ensure that the US will cooperate with its allies to incite democratic changes in the region. For instance, the allies together should pressure the Castro regime to release political prisoners.

III. Kerry Emphasizes Free and Fair Trade

Senator Kerry highlighted increased trade with Latin America as essential to sparking growth and strengthening ties between nations in the hemisphere. Kerry criticized the Bush administration for failing to negotiate trade agreements in Latin America that encompass basic principles, such as labor and environmental standards. He did not comment on the FTAA, but presumably would pursue such objectives on a region-wide basis as well as bilaterally.

Kerry plans to bring the Central American Free Trade Agreement (CAFTA) back to the negotiating table, in order to secure economic benefits, spur job creation, and protect workers and the environment. Kerry also denounced the Bush administration for taking a "one size fits all" approach to trade agreements like CAFTA.

IV. Senator Kerry Encourages Reform of U.S. Immigration Laws

Kerry was highly critical of the current U.S. immigration system, and promises to enact reform of U.S. immigration laws while simultaneously strengthening the economy and security. Kerry claims that President Bush has failed to improve the position of U.S. immigrants. Instead, the Administration's general proposal would lock immigrant workers into a second-class status that drives down wages and workplace conditions for all U.S. workers.

Kerry's plan centers around support for two legislative bills with bipartisan support—the Development, Relief and Education for Alien Minors (DREAM) Act (S. 1545) and the Agricultural Job, Opportunity, Benefits and Security (AgJobs) Act (S. 1645 and H.R. 3142). The DREAM Act would provide qualified undocumented high school students who wish to attend college or serve in the armed forces an opportunity to gain conditional permanent residential status. The AgJobs bill would reform the current agricultural guest worker program to allow agricultural employers unable to find American workers to hire immigrant farm workers. As part of his reform efforts, Kerry will address the status of Central American immigrants and support English language and civic education in efforts to prepare immigrants for U.S. citizenship.

In addition, Kerry plans to reach a new accord with Mexico to better control the southern U.S. border and eliminate illegal smuggling. Efforts with Mexico include a revamp of national security databases and watchlists to better monitor individuals cross the border.

OUTLOOK

Senator Kerry's recent introduction of his proposed U.S. policy toward Latin America comes as a direct attack on what he perceives as the Bush administration's lack of engagement in the region. Kerry draws on the alleged ignorance of President Bush regarding the political and economic realities of Latin America and promises to reverse the course of the last four years. Kerry provided only general comments on trade issues and said he would pursue stronger provisions on labor and environment in CAFTA and other negotiations.

The Bush administration responded to Kerry's new policy vision with sharp criticism that Kerry is ignoring the president's work with Latin America's leaders, particularly through the negotiation of recent free trade agreements.

Republican Members of Congress have also denounced Kerry's new plan for Latin America, claiming that he is only attacking the president to compensate for his "inability to connect with Hispanic voters." The Members claim that this campaign continues to spread pessimism and is the "latest stop in his misery tour spreading doom and gloom nationwide." Representatives Henry Bonilla (R-Texas), Devin Nunes (R-California), Ileana Ros-Lehtinen (R-Florida), Lincoln Diaz-Balart (R-Florida) and Mario Diaz Balart (R-Florida) signed the statement on June 26, 2004.

Many academics and analysts are skeptical of any significant change in general U.S. policy towards Latin America, regardless of whether a Kerry or Bush wins the presidential election. They argue that the US still must focus its resources on other parts of the world, particularly the Middle East. They note that Bush had identified Latin America as a priority when he assumed office, but events in other parts of the world lead the U.S. to concentrate its resources on other areas and issues. Thus, it remains to be seen if Kerry is making such a strong stand to appease Hispanic-American voters, or intends to alter significantly U.S. policy towards the region.

NAFTA

Mexico and US Agree to Improve Regional Competitiveness at Partnership for Prosperity Conference; OPIC Agreement Enters Into Force

SUMMARY

On June 28-29 Government officials and representatives from the private sector held a session in Guadalajara on the Partnership for Prosperity Initiative. Mexico and the United States agreed to: (i) improve regional competitiveness and infrastructure; (ii) increase rural economic growth; and (iii) support small and medium enterprises.

In related news, the Ministry of Economy published on June 14, 2004, in the *Diario Oficial*, a decree that establishes the entry into force of the U.S.-Mexico Overseas Private Investment Corporation (OPIC) agreement. The agreement will facilitate U.S. investment into Mexico and contribute to the Partnership for Prosperity efforts.

ANALYSIS

I. Mexico and US Agree to Improve Regional Competitiveness

On June 28-29 Government officials and representatives from the private sector held a session in Guadalajara on the Partnership for Prosperity Initiative. Presidents Vicente Fox and George W. Bush originally launched the Partnership for Prosperity Initiative in 2001, which aims to improve economic development in Mexico to reduce immigration to the United States. The initiative is based on the premise that an integrated prosperous region will be more stable. The conference focused on various areas, including human capital development, financial services, and information technology.

The main initiatives that resulted from the Guadalajara conference include:

- **Financing of Key Infrastructure Needs.** The U.S. Agency for International Development (USAID), the National Bank of Public Works (BANOBRAS), and the U.S. financial advisory firm Evensen Dodge, agreed to continue issuing debt certificates to finance key infrastructure projects in various states in Mexico.

- **Development of Small and Medium Enterprises (SME).** The U.S. Small Business Administration (SBA) will continue to develop Small Business Development Centers to promote the growth of Mexico's (SME).

- **Funding of Development Projects.** The U.S. Trade and Development Agency (USTDA) will continue to promote grants and project development funding in many areas, including intelligent transportation, airport modernization, water/waste systems, and housing.

- **Increasing Cooperation in Education and Training.** USAID and its partner network of land universities will implement six new Mexico-U.S.

educational partnerships under the Training, Internships, Exchanges and Scholarships (TIES) initiative. The partnerships will focus on rural economic growth. In addition, the National Council for Science and Technology (CONACYT) concluded several cooperation agreements with U.S. academic institutions to grant scholarships to Mexican students and collaborate in joint research projects.

- **Private Sector Initiatives.** Leading representatives from the private sector in Mexico and the United States agreed to implement a "follow-up mechanism" that identifies progress in three key competitiveness areas that are common to both countries: customs, intellectual property, and government purchases.

II. OPIC Agreement Enters Into Force

The Ministry of Economy published on June 14, 2004, in the *Diario Oficial*, a decree that establishes the entry into force of the U.S.-Mexico Overseas Private Investment Corporation (OPIC) agreement. The agreement will allow OPIC to facilitate private sector investment in Mexico and contribute to the Partnership for Prosperity efforts. In particular, OPIC will be able to support U.S. businesses of all sizes with financing and political risk insurance of up to $250 million per project.

Mexico and the United States signed the OPIC agreement at the Partnership for Prosperity meeting held in San Francisco in 2003.

OUTLOOK

The Partnership for Prosperity initiative is a clear example of how Mexico and the United States aim to expand the North American Free Trade Agreement (NAFTA) beyond trade and investment.

The United States is very keen to continue supporting this effort for two main reasons. First, a more prosperous Mexico that provides opportunities to all its citizens will translate in less immigration to the United States and more security at the U.S.-Mexico border. Second, by financing concrete development projects in Mexico, the United States aims to develop a more integrated region that could eventually become more competitive.

NAFTA Highlights

Modifications to NAFTA Rules of Origin Takes Effect for Mexico

On July 15, 2004, the Office of the U.S. Trade Representative published in the Federal Register (FR) an announcement that modifications made to rules of origin (ROO) under the North American Free Trade Agreement (NAFTA) have entered into force for Mexico as of today.

The changes to the ROO under NAFTA were made by Presidential Proclamation on January 17, 2003 and applied retroactively to Canadian goods that entered or were withdrawn from warehouse on or after January 1, 2003. The Proclamation did not specify on what date the changes would become effective for Mexico. In April 2004, Mexico obtained the necessary authorization to modify the ROO for goods entering from the United States.

MULTILATERAL

Speakers Discuss the Future of the Doha Round, Upcoming WTO Accessions

SUMMARY

Women in International Trade (WIIT), a DC-based trade association, hosted on July 1, 2004 a panel discussion on the future of the Doha Round and the upcoming World Trade Organization (WTO) accessions. Speakers discussed WTO efforts to reach framework agreements at the critical General Council meeting at the end of July, and the status of WTO accession negotiations including Russia.

ANALYSIS

I. Panelists Discuss WTO July General Council and Accession Negotiations

July is a critical month for determining the future shape of the WTO and its credibility as an effective international organization. The success or failure of the July 27-29 General Council meeting will depend on the U.S., the EU, the developing countries, and other trading partners' willingness to compromise on sensitive trade issues.

The roundtable discussion focused on the outlook for Doha Round negotiations and also on the question of WTO accessions, particularly that of Russia.

Panelists in the roundtable discussion included:

- Matthew B. Rohde, Deputy Assistant U.S. Trade Representative for WTO Affairs;
- Petros Sourmelis, Economic Counselor, European Union Delegation; and
- Nikolay Platonov, Senior Legal Advisor, Russian Trade Mission.

II. Deputy Assistant U.S. Trade Representative Upbeat on Prospects for the Doha Round

Matthew B. Rohde, Deputy Assistant U.S. Trade Representative ("DAUSTR") for WTO Affairs, discussed the most significant issues for the Doha Round of negotiations and the prospects for moving the negotiations forward this summer. Rohde was optimistic that WTO members are ready to negotiate and compromise by the July General Council meeting in Geneva and stated that successful negotiations could set the Round "back on track."

Rohde noted that a marked change in sentiment has been evident among U.S. trading partners since Zoellick's eleven-day trip around the world in February 2004. According to Rohde, the trip "stirred up goodwill" among U.S. trading partners. In addition, Rohde commented that the USTR's pursuit of Free Trade Agreements (FTAs) in recent years have been consistent with the country's multilateral goals. Nonetheless, Rohde acknowledged that negotiations will be challenging, with agricultural issues remaining at the core.

Rohde highlighted key issues affecting the preparation for negotiations and the July meeting:

- ***Agriculture a priority issue:*** "Significant progress" has been made on the agricultural front, particularly with regard to the three pillars—subsidies, supports, and market access. Negotiations in this sector will continue to be the most challenging.

- ***Non-Agricultural Market Access set to move:*** Negotiations should go more smoothly in non-agricultural market access once there is progress in agriculture. The text prepared will likely be based on the text prepared at the Cancun Ministerial.

- ***Services needs improvement:*** Negotiations will focus on ensuring additional and improved market-access offers in this sector.

- ***Singapore Issues – convergence on trade facilitation:*** A consensus is forming to move negotiations forward on trade facilitation and to leave the remaining three issues out of the Doha Round. In this case, negotiating modalities (guidelines) must be established for trade facilitation.

III. European Union Representative Provides Update on Accession Negotiations

Petros Sourmelis, Economic Counselor of the European Union Delegation in Washington DC, provided general comments on the WTO accession process and reported on the EU's position in accession negotiations with Russia, Ukraine, Saudi Arabia, and Vietnam.

Sourmelis's discussed important aspects of the accession process from a European perspective, including:

- ***WTO still credible:*** The WTO remains an attractive and respected organization, as evidenced by the 26 countries now on the list for accession.

- ***WTO accession encourages domestic reform:*** WTO accession is essential to locking in legal, regulatory and market access reforms. The WTO can help create greater transparency in the world trading system.

- ***Insufficient WTO representation:*** Certain geographical areas are not sufficiently represented in the WTO, namely the Middle East and the Mediterranean.

Sourmelis also commented on the critical role that the EU plays in the WTO accessions. Unlike the U.S., the EU has initiated or completed bilateral market access agreements with many accession countries, including Russia.

- ***Russia:*** The EU concluded a bilateral market access agreement with Russia on May 1, 2004, after 10 years of work on the deal. This is the first major step in Russia's accession to the WTO, and is especially important because the EU represents 50 percent of Russia's external trade.

Sourmelis highlighted the three most significant elements of the agreement:

1. *Market access* – Russia has offered to liberalize its market to trade in goods and services, with tariffs on industrial goods set to decline from an average of 18 percent to 7.6 percent.

2. *Energy* – On energy pricing, Russia agreed to let domestic energy prices rise in order to encourage more efficient production and consumption.

3. *Overflight* – Russia agreed to revamp the system by which it charges European airlines for flights passing over Siberia. Russia has committed itself to creating a new, cost-based, and more transparent system by 2013, at the latest.

- ***Ukraine:*** The EU completed a bilateral market access agreement with Ukraine in March 2003 and maintains an agreement with the country on technical assistance.

- ***Saudi Arabia:*** The EU completed a bilateral market access agreement with Saudi Arabia in August 2003. Of major interest in the accession negotiations is the pricing of natural gas.

- ***Vietnam:*** The EU has made progress on the bilateral front, beginning a new round of negotiations this week, with hopes of completion in the fall.

IV. Embassy Representative Presents Russian Perspective on WTO Accession

Nikolay Platonov, Senior Legal Advisor for the Trade Mission at the Russian Embassy discussed Russia's upcoming accession to the WTO. Platonov commented on Russia's eagerness to join the WTO, the importance of the bilateral deal with the U.S., and the predicted timeline for accession.

Platonov highlighted the following issues:

- ***Progress in bilateral talks*** – Russian has made progress in negotiations with various countries over the last several years, and has signed bilateral protocols with several important trading partners, namely the EU.

- ***EU deal the basis for accession*** – The bilateral agreement with the EU was the most significant step in the accession process. The two trading partners resolved important issues, including tariff rate reductions, trade-related energy differences, and tariff-rate quota levels. The EU represents more than 50 percent of Russia's trade in goods, an equivalent of $110 billion in 2003. Platonov suggested that other countries replicate the commitments agreed upon in this deal.

- ***Other concessions*** – Although the agreement with the EU should serve as the basis for a deal, Russia is prepared to make concessions in sensitive areas with other trading partners. Concessions outside the framework negotiated with the EU would be "exceptions to the rule."

- ***End 2004 target*** – Russia wants to conclude all bilateral market access negotiations by the end of 2004. Russia hopes to conclude talks with the U.S. prior to the November presidential elections. Although a final date for accession to the WTO is uncertain, Russia hopes to engage in the final round of multilateral negotiations (of the Working Party) by the start of 2005.

OUTLOOK

WTO Members have a challenging task ahead in the next three weeks in July in their efforts to put the Doha Round "back on track." Thus far, there are many promising signs including from the U.S., EU and many developing countries that Members will reach a framework this month. Nevertheless, technical negotiations in Geneva centering upon agricultural reform are far from resolved. Members still have to make tough compromises to agree on basic approaches (or 'framework agreements') to tackle market-access barriers, subsidies and other forms of protection in this sector. Once negotiations on agriculture converge towards an agreement, the other outstanding issues since the Cancun Ministerial should start to fall into place.

Meanwhile, WTO accessions continue forward with the most progress reported in Russia's efforts. Although Russia concluded a bilateral deal with its largest trading partner the EU in May, there remain a number of outstanding issues with the U.S. and other WTO Members. Moreover, Russia must decide whether it can provide access in various sensitive sectors in order to conclude accession talks by the end of this year, or early next.

WTO Members Engage in Intensive Negotiations on WTO Draft Framework Agreements; General Council Chair Warns of "Drop Dead" Date of July 30

SUMMARY

The submission of the "July package" of draft framework agreements on July 16 has been followed by a week of intense and difficult negotiations by delegations in Geneva. Although most WTO Members agree that the texts offer a basis for agreement at the crucial General Council meeting on July 27-29, there are substantial differences on all of the major issues. There is also controversy over the texts' presentation of certain issues, including services. It is clear that there is a real possibility of failure to resolve them all in the few days remaining.

Following an initial discussion among Heads of Delegation early this week, WTO Members have begun intensive discussions in different working groups on the key issues included in the framework agreements. The outcome of these discussions will determine whether there can be agreement on detailed negotiating guidelines on subjects like agriculture, or if Members can only agree to shorter and less specific language for the frameworks. What is apparent, as General Council Chairman Shotaro Oshima has indicated, is that the end of next week is a "drop dead" deadline (July 30) for the viability of the Doha Round, and with it the effectiveness of the WTO as an institution.

ANALYSIS

I. Framework Agreements Include Some Surprises, Many Issues to Resolve

The draft text circulated by General Council Chairman Ambassador Oshima on 16 July consisted of a draft Decision by the General Council to which were attached four annexes containing frameworks for negotiating modalities on agriculture and non-agricultural market access (NAMA); the recommendations of the Services Council on the services negotiations; and proposed modalities for negotiations on trade facilitation. In essence, as the Chairman explains in a covering note, the purpose of this Decision is to resolve the major issues which were the cause of the breakdown of the Cancun Ministerial Conference, so as to allow the Round to move forward. The critical issues at Cancun were agriculture, NAMA, the Singapore issues and cotton subsidies.

A. <u>Key Elements of the Draft Decision</u>

1. <u>Development</u>

The draft Decision itself, apart from its annexes, has given rise to animated debate, above all on the issue of Development. Since there is no annex on this subject, all that will be decided on it in July will be contained in the Decision, which is mainly concerned with the review of provisions for special and differential treatment in the WTO Agreements, with technical assistance to developing countries and with the long list of unresolved "implementation issues."

The text mandates special and differential treatment for all developing countries and calls for the specific concerns of "preference dependent, commodity dependent and net food-importing developing countries" to be appropriately addressed. In addition, the concerns of "small, vulnerable developing countries shall be taken into account, without creating a sub-category of Members." This final provision has been sharply criticized by more advanced developing countries which will be expected to make a significant contribution to liberalization in this Round, and which view with alarm the recognition of an extremely large group of potential free riders. These countries had opposed the inclusion of a reference to "small and vulnerable" countries in the text. This is much more than a drafting problem. Underlying it is the tension arising from the "graduation" of the more advanced developing countries and the emergence of the "Group of 90" developing countries and the prospect of the "Round for Free" which was at one time held out to them (by EU Commissioner Lamy).

2. Cotton

The draft Decision notes that the issue of cotton subsidies will be dealt with in the context of the agriculture negotiations. This has not been accepted by the four West African cotton producers – Burkina Faso, Chad, Niger and Mali – which raised the issue before Cancun and have insisted on a self-contained agreement on early elimination of export subsidies, plus the establishment of a cotton sector support fund.

3. Services

There is no debate about the recommendations already adopted by the Services Council but there is concern about the treatment of services in the draft Decision, where the recommendations are noted along with the work of other negotiating bodies. India, Brazil and the US among others argue that given its importance as a market access issue services should be given equal prominence in presentation to agriculture and NAMA.

4. Singapore Issues

Apart from trade facilitation, which is discussed below, the Decision says that Investment, Competition and Transparency in Government Procurement will be dropped from the Doha Work Programme and no work towards negotiation on any of them will take place in the WTO during the Doha Round. This is likely to be accepted, though some countries such as Malaysia may still press for their complete and permanent exclusion from the WTO.

5. Other Elements

The draft Decision extends the moratoria on customs duties on electronic transmissions and on dispute settlement action against developing countries on certain (non-violation) complaints under the TRIPS Agreement.

II. Considerable Differences Remain Over Annexes on Agriculture, NAMA and Trade Facilitation

A. Annex A: "Groser Text" on Agriculture May Be Too Detailed

The draft agriculture framework submitted by Ambassador Groser in Annex A surprised many by its complexity, subtlety and high level of detail. Some fear that it may present too many issues for resolution in the short time available. As negotiations proceed it has also, inevitably, come under attack from all sides on specific issues. In particular, the

Group of 20 developing countries have called the text unbalanced and unacceptable, questioning almost all elements of it. France has also condemned it for lack of balance and criticized Commissioner Lamy for exceeding his mandate.

- Domestic Support. For the US, which is generally prepared to work with the text, it considers the proposals on domestic support as being too detailed and specific by comparison with other subjects. For the G20 and others they are too lax, in particular the proposals on possible transfer of some payments from the “amber box” to the shelter of the “blue box.” This is one of the main reasons for accusations of greater attention to the concerns of major developed countries.

- Export competition. Some countries including the EU have criticized the lack of balance as between export subsidies and other, indirect, forms of export competition such as export credits, food aid, state-trading enterprises and other programmes.

- Market access. Net importers in the G-10, including Japan, Korea and Switzerland, objected to ceilings or “caps” on high tariffs, comprehensive tariffs cuts and expansion of all tariff quotas. Moreover, they complained that insufficient flexibility is provided for sensitive products like rice. The EU also insisted that countries should have the right to self-select products that would be considered sensitive products. Others believe that recognition of “sensitive products” could create a major loophole in the disciplines applied to developed countries. Developing countries including Brazil and India criticized the market access provisions for imprecision on possible flexibilities for developing countries. The text suggests that negotiations on “special products” and special and differential treatment be handled at a later date. The US disagreed, and believes that there is too much flexibility.

It remains true that agricultural liberalization by industrialized countries is the key to progress in all other areas of the Round. The overriding question is whether those countries with an interest in slowing down the agriculture negotiations can see enough countervailing benefits elsewhere in the agenda to allow agriculture to move forward. There are many other difficulties, but this is the fundamental issue.

B. Annex B: “Derbez Text” on Non-Agricultural Market Access Intact Since Cancun

The draft framework for NAMA is the “Derbez Text” which emerged from the Cancun Conference and has been controversial ever since. There has not been enough progress in discussion of tariff negotiations to permit the Chairman, Ambassador Johanneson of Iceland to submit a new proposal. Although it is proposed that least developed countries should be exempted from any tariff reduction commitments, the Derbez text has been unacceptable to many developing countries which insist on greater flexibility to maintain higher tariffs. Many developing countries which enjoy preferential access to developed markets are also concerned about the loss of preferences (e.g., tariff erosion) implied by MFN tariff reductions by developed countries.

For the same reasons developing countries have opposed the proposal that tariffs should be eliminated in a number of industrial sectors – the "sectoral approach" which is strongly supported by the US, the EU, Japan and other industrialized countries. The current draft does not propose specific sectors for this treatment, unlike the draft submitted to Cancun, but the principle of sectoral tariff elimination itself is opposed by many.

The difficulties in this area are such that many doubt whether it will be possible to agree any framework by 29 July. One solution may be to send forward the Derbez text with a covering letter describing the positions of different groups in relation to it.

C. Annex C: Recommendations of the Council for Trade in Services Lacks Specific Targets for Revised Offers

The Services Council has adopted recommendations which will not be amended and will form part of the July package in their present form. They call for the submission "as soon as possible" of initial offers by those countries which have not yet done so and for the establishment "as soon as feasible" of a date for the submission of "a round" of revised offers. This is in recognition of the fact that very little progress has yet been made in the complex and time-consuming negotiation of services commitments, which will entail the submission and revision of successive drafts. The lack of specific targets for tabling of offers is regretted by some Members.

D. Annex D: Modalities for the Launch of Negotiations on Trade Facilitation

The draft text provides for the launch of negotiations on trade facilitation while the other three Singapore Issues are dropped from the Doha Round.

Although initial reactions have been mixed, Members have accepted the text as a basis for negotiations and, for the first time since Cancun, developing countries have engaged in a serious discussion on the modalities for negotiation. However, a group of developing countries[4] has tabled a "room text" proposing substantial amendments to Annex D.

In particular, it is left open whether the result of the negotiations would be a legally enforceable agreement to which WTO dispute settlement provisions would apply. It is also proposed to detach the negotiations from the "single undertaking" of the Doha Round by providing for a different end date, and to be agreed by the General Council, and by deferring the implementation of results until the completion of harmonized rules of origin under the Agreement on Rules of Origin.

Provision of financial and technical assistance and capacity building to developing and least-developed countries would be a prior condition for their implementation of results. Nor would they be required to undertake infrastructural investments beyond their means. Developed countries in particular would be committed to ensure such assistance, including for infrastructure, before, during and after negotiations.

[4] Bangladesh, Egypt, India, Indonesia, Jamaica, Kenya, Malaysia, Nigeria, Philippines, Trinidad and Tobago and Zambia.

Least-developed countries would be required to undertake commitments "only to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities."

Consultations are continuing. It will clearly be difficult for other countries to accept some of these proposals, particularly the detachment of the subject from the Doha Round and the possible non-applicability of the Dispute Settlement Understanding.

OUTLOOK

At this stage, some key Ambassadors believe that there are too many open issues to be resolved in so few days and that no real convergence is apparent. If so, a simplified face-saving text is the most likely fall-back result. Ambassadors are meeting again on July 23 as Heads of Delegation to review the week's work. Revised drafts may be presented at this meeting, or perhaps over the weekend if some compromises can be reached.

Next week, Members intend to convene special sessions that are expected to include ministerial-level participation, including U.S. Trade Representative Robert Zoellick, EU Trade Commissioner Pascal Lamy, Brazilizian Foreign Minister Celso Amorim and possibly others. Their presence is expected to add momentum and decision-making authority. The aim is to reach agreement on the texts at the General Council meeting of July 27-29, with the possibility of spill-over into Friday, July 30.

Zoellick, Lamy and Amorim, along with Minister Nath of India, have expended considerable efforts in recent months to revive the Round, meeting in small gatherings in Paris last month, and at the G-90 ministerial gathering in Mauritius last week.

WTO Members are aware that they face an unusually critical deadline next Friday, which if missed, would result in an indefinite impasse, or even the end of the Doha Round. If agreement on the present draft proves impossible they will seek a less ambitious outcome, which ought to ensure some degree of success (and avert failure). But the negotiating process ahead remains unpredictable, and there are many potential deal-breakers. Beyond the critical issues of agricultural reform and NAMA, the development aspects of the Round are highly controversial. Failure would reinforce doubts about the effectivess of the WTO, and especially its decision-making processes, in an era of universal membership.

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