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LIMITED LIABILITY PARTNERSHIP

Japan External Trade Organization  
**WTO AND REGIONAL TRADE AGREEMENTS**  
**MONTHLY REPORT**

*December 2005*



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

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## SUMMARY OF REPORTS

### United States

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#### Progress Report on Current U.S. FTAs

The United States is currently in free trade agreement (FTA) negotiations with several countries. Negotiators from the Office of the United States Trade Representative (USTR) have met with different delegations in moving FTA talks forward. We review here the progress and status of U.S. FTA negotiations with: (i) Bahrain; (ii) Oman; (iii) South Korea; (iv) Thailand; (iv) Andean countries; and (v) the Southern African Customs Union (SACU).

#### USTR Releases Report on China's WTO Compliance

On December 11, 2005, the Office of the United States Trade Representative (USTR) issued its *2005 Report to Congress on China's World Trade Organization (WTO) Compliance*. This is the fourth report that USTR has prepared pursuant to the U.S.-China Relations Act of 2000 which mandates annual reporting on China's compliance with the bilateral and multilateral commitments made as part of China's WTO accession. We review here the report's assessment of China's WTO compliance the role the United States will play in ensuring that China is compliant with WTO commitments.

### United States Highlights

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

- House Democrats Blame USTR For Holding Up DR-CAFTA Implementation
- Senate Passes Budget Bill Containing Byrd Amendment Repeal, But House Must Approve Bill Again
- Senate Confirms Presidential Trade Appointments
- USTR Announces Additional Allocations for Imported Raw Sugar Cane
- House Approves Budget Bill Conference Report That Includes Modified Byrd Amendment Repeal Provision
- Senate Passes Motion Urging Conferees to Remove Byrd Repeal Language From Bill
- Senate Finance Committee Holds Hearing to Review Agriculture Negotiator, Assistant Secretary of Commerce
- Senator Warns President Bush Not To Rush Into Bilateral Talks On Russia's WTO Accession

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- Senators Call for Preservation of U.S. Trade Laws
- USTR Fills Special Textiles Negotiator Position
- President Signs Appropriations Prohibiting FTAs with Restrictions on Pharmaceutical Re-Importation
- Treasury Report Finds China Not a "Currency Manipulator"
- USTR Will Announce ATPA Review Results in December

### **Free Trade Agreements Highlights**

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- USTR To Measure U.S. Industry Interest in Potential U.S.-Swiss FTA
- Grassley Urges USTR to Notify Congress of U.S.-Peru FTA Under TPA Expiration Deadline
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- Egypt Trade Minister Sees January as Likely Date to Announce U.S.-Egypt FTA
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- United States and Peru Continue FTA Talks
- United States Updates the Status of Potential FTAs, Will Decide on Each Before End of Year
- Japan and U.S. Will Sign MRA for Telecom Equipment
- Peru, Colombia and Ecuador Call Off U.S.-Andean FTA Talks; Push for Further Negotiations in December, January

## **Africa**

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### **Cato Institute Hosts Panel on the Effects of Trade Liberalization in Africa**

On December 6, 2005, the Cato Institute hosted a panel on trade liberalization's effects on sub-Saharan African economies. Representatives from non-profit organizations and the private sector gave their **on-the-record** assessments of trade liberalization in economically developed countries and whether the practice would help African nations grow and eradicate poverty. We review here those assessments.

## **Multilateral**

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### **Outcome of the Sixth WTO Ministerial Conference: Implications for U.S. Negotiating Objectives**

The World Trade Organization (WTO) held the sixth session of its Ministerial Conference in Hong Kong from December 13-18, 2005. After six days of complex and difficult negotiations, ministers from the WTO's 149 Member governments approved the Ministerial Declaration late on 18 December putting, in the words of Director-General Pascal Lamy, the Doha Round trade talks "back on track". Based on the content of the Ministerial Declaration dated December 18 ("the Declaration"), we assess below the outcome of the Ministerial Conference in priority U.S. negotiating areas vis-à-vis U.S. objectives in those areas.

## **WTO Appellate Body Releases Report on Rice Dispute Between Mexico and the United States**

The WTO Appellate Body has largely upheld the findings of a WTO Panel that an anti-dumping investigation by Mexico on imported U.S. rice violated Mexico's obligations under the Anti-Dumping Agreement. The Appellate Body found that aspects of both the dumping and injury determinations by the Mexican investigating authority were inconsistent, as applied, with Mexico's obligations under the Agreement. It also found certain provisions of Mexico's Foreign Trade Act to be WTO-inconsistent "as such."

However, the Appellate Body overturned the findings of the Panel that an investigating authority has the obligation to notify the investigation to all interested parties of which it could "reasonably obtain knowledge", and to calculate individual margins of dumping for these exporters and producers. The Appellate Body disagreed, saying that such obligations applied only for parties actually "known" to the investigating authority, and not for "exporters or foreign producers of whose existence it was unaware."

## **U.S. Congressional Members Weigh in on WTO Negotiations**

While United States Trade Representative (USTR) Rob Portman and various trade officials tackled World Trade Organization (WTO) negotiations in Hong Kong for the December 13-18 Ministerial Conference, U.S. Members of Congress were stuck in Washington, D.C. attending to unfinished appropriations legislation. Despite being unable to attend the Hong Kong Ministerial as originally planned, many interested members of Congress monitored the talks and promoted their positions on the various negotiating sectors. We review here the assessments of several Members of Congress on the WTO negotiations including the talks on services, agriculture, and textiles and apparel.

## **December 17-18 WTO Ministerial Update: Are the Few Advances Enough to Save the Round?**

Although days 5 and 6 of the World Trade Organization's (WTO) Hong Kong Ministerial Conference produced the week's first and only substantive breakthroughs, many trade ministers felt that the week's few advances were insufficient. The most notable progress occurred in agriculture, as WTO Members finally agreed to an end date for the elimination of export subsidies. Trade ministers also made gains in market access to least developed countries (LDCs) and cotton subsidies. Overall, however, many trade negotiators and outside observers opined that Hong Kong failed to revive the stalled multilateral trade negotiations.

## **December 16 WTO Ministerial Update: Main Issues Stalled As Members Write Texts**

Day 4 of the World Trade Organization's (WTO) Hong Kong Ministerial Conference has produced little substantive gains in the key negotiating areas. WTO Members has thus far failed to advance agriculture negotiations, and these problems have adversely impacted the already



contentious services and industrial market access (NAMA) talks. WTO Director General Pascal Lamy has set a 6 a.m. Dec. 17 deadline for Members to submit proposals for amending a Hong Kong draft ministerial text that is supposed to further define the Doha Round's objectives. Lamy hopes to circulate the revised ministerial text midday December 17. At this stage, however, it appears unlikely that the text will reflect any major steps forward.

### **December 15 WTO Ministerial Update: Lack of Progress Causes Mounting Frustrations**

The World Trade Organization (WTO) is holding its Ministerial Conference in Hong Kong. WTO Members have made little progress during the Ministerial Conference's third day, with no progress on the Doha Round's most contentious negotiating area, agriculture. Sources report that trade officials are becoming increasingly frustrated with the talks' lack of progress.

### **December 14 WTO Ministerial Update: Big Agenda, Little Convergence**

The World Trade Organization (WTO) is currently holding its Ministerial Conference in Hong Kong. The Ministerial's first day focused on agriculture, non-agricultural market access (NAMA) and a "package" of measures in favor of least developed countries (LDCs). According to WTO Director-General Pascal Lamy, these are the areas where progress is most needed, not least because the topics are tactically linked. We review here the status of the Ministerial Conference and its major developments.

### **AEI and the Aspen Institute Host Members of Congress to Discuss "Breaking the Doha Deadlock"**

On December 8, 2005, the American Enterprise Institute (AEI) and the Aspen Institute hosted a panel on "Bipartisan Action on Agricultural Reform: Breaking the Doha Deadlock." Congressmen Jim Kolbe (R-AZ) and Adam Smith (D-WA) provided their analysis of current World Trade Organization (WTO) agriculture negotiations as part of the Doha Round. We review here their assessments of the negotiations.

### **WTO Members Must Show Reciprocity To Achieve A Successful Outcome at Hong Kong**

On December 7, 2005, the International Institute for Economics (IIE) hosted a panel on the outlook for the World Trade Organization (WTO) Ministerial in Hong Kong. The speakers provided their views on the current status of negotiations and policy recommendations on how to achieve a successful outcome in Hong Kong. We review here those assessments.

### **Preparations and Prospects for the Hong Kong WTO Ministerial Conference**

The General Council of the WTO agreed on 2 December to the draft Ministerial Declaration. It will now go forward for further negotiation and adoption by Ministers at the Hong Kong Ministerial Conference. The draft reflects the November decision that lack of convergence made it necessary to downgrade or "recalibrate" objectives for Hong Kong: it does not contain draft

modalities for the negotiations on agriculture and non-agricultural market access (NAMA) but proposes a commitment to establish them early in 2006. This text implies a subsequent meeting at the Ministerial level, probably at the end of March. The new Conference objective is to make substantive progress wherever possible to improve the chance of a March 2006 agreement on full modalities and the Round's conclusion in 2006, while avoiding potentially damaging divisions over one or more of the agenda's more contentious issues. Deferment of the most difficult decisions on modalities, however, does not guarantee a peaceful meeting.

A failure in Hong Kong will almost certainly necessitate the extension of U.S. Presidential Trade Promotion Authority (TPA), formerly known as "fast-track authority," beyond its scheduled expiration date in mid-2007. However, such an extension would come with a price. Congress may well reduce the negotiating flexibility of U.S. negotiators, particularly on politically-contentious issues such as anti-dumping. Thus, rather than simply extending the deadline, any Congressional approval to roll forward the TPA's expiry could make the ultimate conclusion of the Round more difficult. This could be one of the costs WTO Members may have to pay for a weak outcome in Hong Kong.

## **Multilateral Highlights**

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- As Aircraft Subsidy Tensions Reemerge, U.S. and EU Join to Fight Intellectual Property Piracy
- USTR Sets First Deadline for Concluding Agricultural Export Subsidies' Negotiations

- Congressional Members Cancel Trip to Hong Kong as Lamy Urges Negotiators to “Re-Double” Efforts for Upcoming Ministerial
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- WTO Negotiating Group Chairs Circulate Drafts on Negotiations Progress; Lamy Issues Draft Ministerial Text

## REPORTS IN DETAIL

### UNITED STATES

#### Progress Report on Current U.S. FTAs

##### *SUMMARY*

The United States is currently in free trade agreement (FTA) negotiations with several countries. Negotiators from the Office of the United States Trade Representative (USTR) have met with different delegations in moving FTA talks forward. We review here the progress and status of U.S. FTA negotiations with: (i) Bahrain; (ii) Oman; (iii) South Korea; (iv) Thailand; (iv) Andean countries; and (v) the Southern African Customs Union (SACU).

##### *ANALYSIS*

#### U.S.-Bahrain FTA

On November 18, 2005, the House Ways and Means Committee and the Senate Finance Committee approved implementing legislation for the U.S.-Bahrain FTA. The approval means that Congress will consider passing the legislation as early as December. Ways and Means unanimously voted to pass the FTA by a voice vote. Democrats had initially expressed concern over Bahrain's labor laws but changed their minds after Bahrain agreed to apply International Labor Organization (ILO) standards to its labor laws and amend legislation to increase protections for unions. United States Trade Representative (USTR) Rob Portman stated that the United States considers Bahrain's new labor obligations enforceable under the FTA. Democrats who supported the FTA's labor provisions, however, made it clear that they would still "push for the inclusion of provisions requiring FTA partners to adhere to the ILO's five core labor standards in other FTAs." Following the Ways and Means vote, the Senate Finance Committee unanimously approved passage of the agreement.

#### U.S.-Oman FTA

On October 3, 2005, USTR Portman and Omani Minister of Commerce and Industry Maqbool Bin Ali Sultan announced the completion of United States-Oman FTA. Oman is the fifth Middle Eastern country to negotiate a FTA with the United States as part of the United States' goal to create the United States-Middle East Free Trade Area (USMEFTA) by 2013. Portman stated that the FTA will "provide a secure, predictable legal framework for U.S. investors operating in Oman, provide for effective enforcement of labor and environmental laws, and protect intellectual property." Portman also noted that the U.S.-Oman FTA is based upon existing agreements with Israel, Jordan, Morocco and Bahrain.

Acting USTR for Services and Investment Christine Bliss stated that the United States and Oman may sign the U.S.-Oman FTA in mid-January 2006. Once the countries sign the FTA,

the Bush Administration will “reflect on the most appropriate time frame for introducing [the FTA] for congressional consideration.”

### **Potential U.S.-South Korea FTA**

At a November 1st Asian Forum, USTR Portman stated that the United States would like to initiate FTA negotiations with South Korea by the end of 2005 but noted that the two sides still have several issues and trade disputes that they must resolve. The United States has repeatedly demanded that Korea change its “screen quota” rules mandating that Korean movie theatres reserve 40 percent of their screen time for Korean films. Pharmaceuticals and auto trade are also contentious issues between the countries. U.S. auto industry representatives note that South Korea has placed non-tariff barriers over the years to prevent the United States, the EU and Japan from exporting their automobiles to the Korean market. Auto imports make up two percent of the Korean auto market. The Korean Government’s consideration of Korea-specific emissions standards for all automobiles sold in Korea would significantly reduce auto imports because foreign automakers’ limited Korean market shares would make Korea-specific car manufacture uneconomical. The Korean Government could eliminate much of its auto imports if foreign automakers do not specify their cars to Korean standards.

Government sources, however, report that FTA talks between the two countries might not begin until early 2006. During President Bush’s November 16-18 visit to Asia to attend the Asia Pacific Economic Forum (APEC) ministerial meeting, Bush met with South Korean President Roh Moo-hyun, and the two leaders issued a joint statement that the two “governments will come together and discuss how to further trade for the benefit of both countries” at an “appropriate time.” Neither gave a timetable as to when FTA talks would begin. USTR Portman met with South Korean Trade Minister Kim Hyun Chong on November 16th to discuss outstanding trade disputes between the two countries including South Korea’s ban on U.S. beef imports, its treatment of rice imports, and its auto trade policies. Officials report that the meetings failed to produce any breakthroughs. Another Korean Government source noted that South Korean Government officials seek legislation to increase rice imports before the country signs an agreement with the United States. The source also stated that Korea is waiting for a report from its animal and plant health advisory committee on U.S. beef before it opens its market to U.S. beef imports. In either case, sources report that trade talks between the two countries will not likely occur before 2006.

### **U.S.-Thailand FTA**

The U.S. and Thai delegations met in London November 14-18, 2005 to continue FTA negotiations. Sources state that liberalization of financial sectors was the most contentious issue during the talks. Naris Chaiysoot, Director-General of the Thai Fiscal Policy Office stated that both sides still have significant differences over the basics of financial sector liberalization. He noted that the United States “refused to acknowledge Thailand’s sensitivities” in financial sector liberalization including capital outflow controls, measures to maintain macroeconomic and financial stability, and controls over remittances and transactions as a deterrent against criminal business activity. Despite these differences, sources indicate that both sides were able to prepare a first draft on the liberalization of the financial sector that includes definitions of financial

service, transparency, disclosure, and a mutual regulatory system. The next round of FTA negotiations will take place in Thailand in January 2006.

### **U.S.-Andean FTA**

Both U.S. and Andean delegations met in Washington, DC from November 21-23, 2005 with the hopes of concluding negotiations by November 23<sup>rd</sup>. Sources report, however, that the U.S. delegation was unable to conclude negotiations with Peru, Colombia and Ecuador and note that Colombia and Ecuador decided to break off their free trade talks with the United States, stating that more rounds of talks are needed. Colombia's chief negotiator, Hernando Jose Gomez, stated that Bogotá and Washington might resume talks before the end of 2005 to finish the FTA. Ecuador's chief negotiator, Manuel Chiriboga, stated that Ecuador and the United States had agreed to meet in early 2006 to finish the deal. Sources indicate that agriculture and intellectual property rights (IPR) remained the most contentious issues and were unresolved during the negotiations. Peru remains the sole Andean country that is close to concluding FTA negotiations with the United States although Peruvian delegates postponed further talks with the United States until December. Peruvian officials stated that they would like to conclude an agreement with the United States in the coming weeks.

### **U.S.-Southern African Customs Union (SACU)**

The United States and the five members of SACU – Botswana, Lesotho, Namibia, Swaziland and South Africa – met in Botswana at the end of September to revive negotiations. Sources report that “some progress” was made during the meetings but that “serious substantive differences could eventually derail the plan.” The parties launched the FTA negotiations in June 2003. USTR Spokeswoman Neena Moorjani reported that both sides were in a “stocktaking period” and looking for dates for the next full round of talks. Originally scheduled to occur in December 2005, agriculture and textiles negotiations have been postponed indefinitely. Sources note that SACU countries are concerned that their service sectors will be unable to compete in a fully open market and also fear the prospect of expropriation in the case of noncompliance with an investment agreement. USTR insists that December 2006 is the deadline for concluding negotiations.

## ***OUTLOOK***

Of the USTR's current list of FTA pursuits, Bahrain and Oman are the only two countries with which the United States has successfully completed FTA negotiations. Geopolitical concerns may have driven those negotiations, as the USMEFTA's goals are based as much on security policy as they are on economic gains. FTAs without such geopolitical motivations have lagged. The failures of the latest round of Andean negotiations dashed any hopes that the United States would complete FTA negotiations before Thanksgiving (November 24<sup>th</sup>). Agriculture and IPR still remain contentious issues for the delegations and indicate that both sides still have more work ahead of them in the coming months. While the United States and Thailand made progress in their FTA, financial sector liberalization is proving a contentious issue. Thailand maintains that several of its financial measures – including capital controls – are necessary for Thailand's economic stability and cannot be dismantled under the FTA's liberalization scheme. Both sides

will most likely discuss the issue at length in January and consult with experts to help advance negotiations.

U.S.-SACU FTA negotiations have again stalled, and the United States has begun downplaying an FTA with South Korea, stressing that market access issues will first need to be resolved before negotiations can commence. President Bush's failure to advance the negotiations during his November meetings with South Korean officials indicates that significant obstacles remain before the negotiations can begin. Should such issues remain unresolved in 2006, the FTA's likelihood will decrease dramatically, as the United States has consistently held that all FTA negotiations must be completed before Presidential Trade Promotion Authority (TPA) expires in mid-2007.

## USTR Releases Report on China's WTO Compliance

### *SUMMARY*

On December 11, 2005, the Office of the United States Trade Representative (USTR) issued its *2005 Report to Congress on China's World Trade Organization (WTO) Compliance*. This is the fourth report that USTR has prepared pursuant to the U.S.-China Relations Act of 2000 which mandates annual reporting on China's compliance with the bilateral and multilateral commitments made as part of China's WTO accession. We review here the report's assessment of China's WTO compliance the role the United States will play in ensuring that China is compliant with WTO commitments.

### *ANALYSIS*

On December 11, 2005, USTR issued its *2005 Report to Congress on China's WTO Compliance*. The report is "an examination of nine broad categories of WTO commitments undertaken by China" with analysis focusing on trade concerns raised by U.S. stakeholders that "in the view of the U.S. Government" merit attention within the WTO context:

- **General developments.** The report notes that "with regards to WTO compliance, for the last four years, China has taken important steps in implementing the numerous commitments that it undertook upon its WTO accession on December 11, 2001." The report notes, however, that China's "implementation work" is incomplete, "especially in the enforcement of intellectual property rights (IPR)." According to the report, China has yet to "fully embrace" WTO principles in market access and has not made its market mechanisms and trade regime predictable and transparent.
- **Intellectual property rights (IPR).** According to the report, "China has done a relatively good job of overhauling its legal regime" but has been less successful in enforcing its laws and regulations to ensure proper IPR enforcement as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The report notes that the Bush Administration "places the highest priority on improving IPR enforcement in China" and has delivered this message to China by: (i) conducting out-of-cycle reviews under special 301 provisions of U.S. trade law involving an evaluation of China's IPR enforcement mechanism; (ii) placing China on the Special 301 "Priority Watch" list and closely monitoring its improvement of IPR enforcement; (iii) creating a comprehensive strategy for addressing China's IPR regime; and (iv) submitting an October 2005 request to China under Article 63.3 of the TRIPS Agreement to seek detailed information on China's IPR enforcement since 2001. The report notes that based on the U.S. moves, "China subsequently agreed to take a series of specific actions designed to increase criminal prosecutions of IPR violators, improve enforcement at the border, counter piracy of movies,



audio-visual products and software, address Internet-related piracy and assist small- and medium-sized U.S. companies experiencing China-related IPR problems.”

- **Trading rights and distribution services.** The report cites that China has implemented full liberalization of its trading rights six months ahead of schedule but has not fully implemented its distribution services commitments. Specifically, the report states that “delay and confusion” have delayed effective liberalization “substantially hindering the ability of U.S. and other foreign companies to begin engaging freely in the distribution of goods in China.” The report notes that the Administration will continue to pursue the distribution services issue in 2006.
- **Industrial policies.** The report states that since accession “China had increasingly resorted to industrial policies that limit market access by non-Chinese origin goods or bring substantial government resources to support increased exports.” USTR listed these harmful policies that include:
  - o Issuance of regulations on auto parts tariffs that serve to prolong prohibited local content requirements for motor vehicles;
  - o Telecommunications regulator’s interference in commercial negotiations over royalty payments to IPR holders related to 3G standards;
  - o Pursuit of unique national standards in many areas of high technology that could lead to the extraction of technology or intellectual property from foreign-rights holders;
  - o Draft government procurement regulations mandating purchases of locally produced software;
  - o New steel industrial policy calling for state management of nearly every major sector of China’s steel industry;
  - o Continuing export restrictions on coke; and
  - o Excessive government subsidization benefiting a range of domestic industries.
- **Services.** The report notes that although China has not fully realized its commitments to increase market access, “overall, the United States continued to enjoy a substantial surplus in trade in services with China in 2005.” The report listed several U.S. services providers that “are continually frustrated by Chinese regulatory authorities.” These U.S.

providers include insurance, telecommunications, and construction/engineering.

- **Agriculture.** The report states that China has become the United States' fourth largest agricultural export market, but that "China's WTO implementation in the agricultural sector is beset by uncertainty, largely because of selective intervention in the market by China's regulatory authorities." The report finds that the "capricious practices by Chinese customs and quarantine officials" have delayed or halted U.S. agricultural shipments into China. According to the report, "sanitary and phytosanitary standards with questionable bases" and a non-transparent regulatory regime make agricultural trade even more difficult. USTR will continue to work with Chinese officials to resolve these contentious issues, including urging China to lift its current ban on U.S. beef imports.
- **Transparency.** The report notes that "China has made important strides to improve transparency across a wide range of national and provincial authorities" and lauds China's Ministry of Commerce (MOFCOM) for its work in adopting WTO transparency norms. The report notes, however, that many other government agencies "continue to resist the changes called for by China's WTO obligations."

### ***OUTLOOK***

The Office of USTR "in 2006 will continue its relentless efforts to ensure China's full compliance with its WTO commitments." The areas of IPR enforcement, institutionalization of China's market mechanisms, non-tariff barriers to agricultural trade and greater transparency will likely be USTR's focus. To date, the Bush Administration has pursued a strategy of "quiet diplomacy" with China, in which closed-door bilateral strategy meetings and subtle U.S. requests that China improve its WTO compliance take precedence over direct confrontation. Although USTR's report conveys the Administration's gentle approach, USTR has indicated that it may pursue more direct and public means to ensure China's WTO compliance in 2006. This change in approach may include other formal requests similar to the October 2005 TRIPS Article 63.3 request or the establishment of a dispute settlement panel. The United States has never sought the establishment of a WTO panel to resolve a dispute over Chinese compliance with WTO rules.

## **United States Highlights**

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### **House Democrats Blame USTR For Holding Up DR-CAFTA Implementation**

In a December 15<sup>th</sup> letter to United States Trade Representative (USTR) Rob Portman, Rep. Charles Rangel (D-NY) and three other House Democrats blame USTR's insistence that member countries conform their domestic laws to the commitments made under the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA) for delaying implementation of the trade agreement. USTR officials have maintained on several occasions that DR-CAFTA might not enter into force on January 1, 2006 as originally planned, unless Central American countries have made sufficient progress amending their domestic laws to reflect the FTA's provisions. Guatemala and Honduras disagreed, maintaining that DR-CAFTA obligations "prevail over [domestic] laws," thus making domestic law alteration unnecessary. USTR has countered that the United States "will move forward as long as at least one country is prepared, and will accommodate new entrants as they become ready."

The congressional letter also blames USTR for insisting on legal changes to reflect commitments in intellectual property and agriculture but not taking a similar position on basic labor standards. The Members called on USTR to adopt a single standard for all areas under the agreement and urged the Administration to "include basic international standards of decency and fairness for working people in the U.S. FTAs." The letter included signatures from Reps. Rangel, Benjamin Cardin (D-MD), Sander Levin (D-MI), and Xavier Becerra (D-CA).

USTR has urged Central American countries to amend their domestic laws to be consistent with the FTA's provisions on intellectual property rights (IPR) enforcement and trademark and copyright protections of the agreement. USTR is also pushing for Central American countries to change their laws related to agricultural market access. USTR will announce in December whether any of the DR-CAFTA signatories will be ready for the January 1 implementation.

Monitoring implementation of the CAFTA provisions was integral in securing congressional passage of the agreement's implementing legislation. USTR's actions indicate that the United States will not stop pursuing its key negotiating objectives upon congressional passage of an FTA. The congressional Democrats' opposition to U.S. implementation objectives and their insistence on labor provisions is consistent with their opposition to the agreement when it was under consideration. The Administration did not cave to these concerns before Congress passed the agreement, and it is unlikely that USTR will do so now.

### **Senate Passes Budget Bill Containing Byrd Amendment Repeal, But House Must Approve Bill Again**

On December 21, 2005, the Senate approved the conference report to the Budget Reconciliation Act, S. 1932, which contains language repealing the Continued Dumping and Subsidy Offset Act (CDSOA, or the "Byrd Amendment") on October 1, 2007. The Senate approved the bill in a 51-50 vote; Vice President Dick Cheney cast the deciding vote. Before the

vote, however, Senator Kent Conrad (D-ND) raised a point of order that language in the bill on Medicare and Medicaid should not be considered as part of a budget bill. The Senate Parliamentarian upheld this point of order, and only 52 Senators voted to waive Senate rules and defeat the point of order. Sixty votes are required to waive Senate rules. As a result, the Senate approved the bill without the disputed language. Because the Senate bill as approved is not identical to the House-approved version, the House must vote again on the revised bill, providing House opponents another chance to defeat it. Congressional sources opine that the House will most likely consider the bill on December 21<sup>st</sup> or 22<sup>nd</sup> before the holiday recess.

The CDSOA mandates the distribution of antidumping and countervailing duties to the U.S. companies that petitioned for trade relief. In March 2005, the World Trade Organization (WTO) allowed seven WTO Members, including the EU, Canada and Japan, to impose retaliatory duties on U.S. imports based on the United States' failure to comply with a 2003 WTO Appellate Body (AB) decision that the law was inconsistent with global trade rules. Upon repeal of the Byrd Amendment, antidumping and countervailing duties (AD/CVD) would go to the general fund of the Treasury.

Under the revised CDSOA repeal provision, the U.S. government will disburse to domestic companies CDSOA payments related to **any subject goods that enter the United States before October 1, 2007**. Section 7601 (a) of the conference report (109-362) to S. 1932 keeps language repealing the Byrd Amendment but also states that "all duties on entries of goods made and filed before October 1, 2007, that would, but for subsection (a) of this section, be distributed under section 754, of the Tariff Act of 1930, shall be distributed as if section 754 of the Tariff Act of 1930 had not been repealed by subsection (a)."

Although the House passed the final version of the budget bill by a narrow 212-206 margin, the Senate's removal of the Medicare and Medicaid provisions from the legislation should not jeopardize House "re-passage." First, any congressmen who based their "nay" votes on these contentious provisions (the American Association for Retired Persons (AARP) – a powerful domestic lobbying group – opposed the budget bill because of the Medicare/Medicaid language) will now likely vote for the revised bill. Moreover, Vice President Cheney's vote in favor of the Senate version indicates that the Administration still supports it. Thus, any House Republicans who may have opposed the revised version because it lacked the cost-cutting healthcare provisions will likely abide by the Administration's wishes and continue to support the bill.

### **Senate Confirms Presidential Trade Appointments**

On December 17, 2005, the Senate unanimously confirmed David Spooner as Assistant Secretary of Commerce for Import Administration and Richard T. Crowder as Chief Agricultural Negotiator for the Office of the United States Trade Representative (USTR). President Bush nominated Spooner and Crowder in November. USTR Rob Portman and Secretary of Agriculture Mike Johanns lauded the confirmations, and Johanns noted that both appointees have "their work cut out for them in the next several months."

Spooner previously served as USTR Chief Textile Negotiator. Before serving as a textile trade negotiator, Spooner was a transition coordinator at the Office of the United States Trade Representative (USTR) after serving an administrative assistant to Representative Sue Myrick (R-NC). Spooner has also served as the Communications Director for the House Agriculture Committee.

Crowder previously served as the President and Chief Executive Officer for the American Seed Trade Association. From 1989 to 1992 he served as Under Secretary for International Affairs and Commodity Programs at the U.S. Department of Agriculture.

### **USTR Announces Additional Allocations for Imported Raw Sugar Cane**

On December 19, 2005, the Office of the United States Trade Representative (USTR) provided notice of additional country-by-country allocations of the in-quota quantity of the tariff-rate quota (TRQ) for imported raw cane sugar from October 1, 2005 through September 30, 2006. The Secretary of Agriculture increased the in-quota quantity of the TRQ for this period by 300,000 short tons, raw value (272,155 metric tons). The allocations are based on the countries' historical shipments to the United States and are conditioned on receipt of the appropriate verifications of origin. The allocations are as follows:

Country	FY 2006 Additional Allocation (metric tons)
Argentina	11,797
Australia	22,771
Barbados	1,920
Belize	3,018
Bolivia	2,195
Brazil	39,781
Colombia	6,584
Costa Rica	4,115
Dominican Republic	48,286
Ecuador	3,018
El Salvador	7,133
Fiji	2,469
Guatemala	13,169
Guyana	3,292
Honduras	2,744
India	2,195
Jamaica	3,018
Malawi	2,744
Mauritius	3,292
Mozambique	3,567
Nicaragua	5,761
Panama	7,956
Peru	11,248

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Country	FY 2006 Additional Allocation (metric tons)
Philippines	37,037
South Africa	6,310
Swaziland	4,390
Taiwan.	3,292
Thailand	3,841
Trinidad-Tobago	1,920
Zimbabwe	3,292

The recent hurricanes injured U.S. sugar producers’ facilities in the Southeast United States, curtailing near-term domestic sugar supply. The United States has, therefore, increased sugar import quotas to meet U.S. demand. These moves do not reflect a long-term change in government policy related to protection of the domestic sugar industry and instead reflect only the impact of the recent natural disasters on the U.S. supply-demand balance.

**House Approves Budget Bill Conference Report That Includes Modified Byrd Amendment Repeal Provision**

On December 19, 2005, the House of Representatives approved the conference report to the Budget Reconciliation Act (S. 1932) which contains language repealing the Continued Dumping and Subsidy Offset Act (CDSOA, or the “Byrd Amendment”). House and Senate conferees, however, modified the language so that the CDSOA would not be repealed immediately. Instead, the U.S. government will disburse to domestic companies CDSOA payments related to any subject goods that enter the United States until October 1, 2007. The Senate is expected to consider the report on December 20. Section 7601 (a) of the conference report (109-362) to S. 1932 keeps language repealing the Byrd Amendment but also states that “all duties on entries of goods made and filed before October 1, 2007, that would, but for subsection (a) of this section, be distributed under section 754, of the Tariff Act of 1930, shall be distributed as if section 754 of the Tariff Act of 1930 had not been repealed by subsection (a).”

The Byrd Amendment mandates the distribution of antidumping and countervailing duties to the U.S. companies that petitioned for trade relief. In March 2005, the World Trade Organization (WTO) allowed seven WTO Members, including the EU, Canada and Japan, to impose retaliatory duties on U.S. imports based on the United States’ failure to comply with a 2003 WTO Appellate Body (AB) decision that the law was inconsistent with global trade rules. Upon repeal of the Byrd Amendment, antidumping and countervailing duties (AD/CVD) would go to the “general fund of the Treasury.”

Although the new conference report language extends the Byrd Amendment through October 1, 2007, it would actually provide for the disbursement of CDSOA monies to U.S. companies for several years beyond 2007. This additional time is due to common lags: (i) between the collection of cash deposits upon entry and the assessment of actual duties owed pursuant to an administrative review of the entries; and (ii) between that assessment and the

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actual collection from importers of any outstanding duties. Congressional sources indicated that it was unclear whether the Senate would approve the final conference report that includes the modified repeal language. On December 15, the Senate approved by a 71-20 margin a motion to instruct Senate conferees to reject outright the repeal language. Most Democrats are expected to vote against the budget bill, meaning that only a few Republicans' "no" votes could block the bill's passage. On the other hand, it is unlikely that few, if any, Senate Republicans will sacrifice a final budget bill that includes the CDSOA provision, as both budget reform and CDSOA repeal are Bush Administration priorities. Should the Senate pass the final budget bill, the President will almost certainly sign it into law.

### **Senate Passes Motion Urging Conferees to Remove Byrd Repeal Language From Bill**

As expected, the Senate on December 15 approved a motion to instruct that urges Senate members of the Budget Reconciliation Act's (S. 1932) conference committee to reject language repealing the Continued Dumping and Subsidy Offset Act (CDSOA, or the "Byrd Amendment"). Senator Mike DeWine (R-OH) offered the motion, which passed by a vote of 72 to 19. The House version of S. 1932 contains the CDSOA repeal language, but the Senate version does not. The House and Senate will convene a conference committee next week to prepare the final version of the budget reconciliation bill. Once a full conference report has been created, the House and the Senate will vote on the final budget package.

The Byrd Amendment mandates the distribution of antidumping and countervailing duties to the U.S. companies that petitioned for trade relief. In March 2005, the World Trade Organization (WTO) permitted seven WTO Members – including the EU, Canada and Japan – to impose retaliatory duties on U.S. imports due to the United States' failure to comply with a 2003 WTO Appellate Body (AB) decision that the law violated global trade rules. Senator Judd Gregg (R-NH) has stated that the CDSOA "does not make sense" because the WTO has authorized retaliation and U.S. companies are being penalized by the retaliatory tariffs. Currently, four of the seven WTO Members have retaliated. If Congress repeals the Byrd Amendment, antidumping and countervailing duties (AD/CVD) would go to the general treasury.

While motions to instruct are non-binding, they do indicate whether the Senate will ultimately pass or reject the final conference report. It is still unclear, however, whether the Senate conferees will follow the motion to instruct and not include the Byrd Amendment repeal in the final bill. Given the Administration's support for the budget bill and CDSOA repeal, however, it appears unlikely that Senate Republicans would follow through with their threats and sacrifice a final budget bill that includes the CDSOA provision.

### **Senate Finance Committee Holds Hearing to Review Agriculture Negotiator, Assistant Secretary of Commerce**

On December 14, 2005, the Senate Finance Committee held a hearing to review President Bush's nominees for U.S. chief agriculture negotiator and Assistant Secretary of Commerce. Richard Crowder, nominee for the United States Trade Representative's (USTR) chief

agriculture negotiator and David Spooner, nominee for Assistant Secretary of Commerce for Import Administration testified before Committee Chairman Charles Grassley (R-IA) and other Congressional members in a reportedly "smooth hearing." When asked about sugar and whether USTR would use the recent sugar provision in the U.S.-Peru Free Trade Agreement (FTA) as a model for other FTAs (under the provision, Peru is granted additional market access for sugar but only if it proves itself a net exporter of sugar), Crowder responded that "sugar is a sensitive issue" and promised to consult with Congress and the U.S. sugar industry on the issue. Meanwhile, Spooner promised to continue enforcing antidumping and countervailing duty (AD/CVD) laws if confirmed. Following the hearing, Grassley stated that he would attempt to seek a committee vote on the nominations by the end of the week, December 16. Neither nomination is expected to encounter Senate resistance.

### **Senator Warns President Bush Not To Rush Into Bilateral Talks On Russia's WTO Accession**

On December 14, 2005, Senator Max Baucus (D-MT), Ranking Member of the Senate Finance Committee, issued a statement to President Bush urging the President not to rush bilateral negotiations on Russia's accession to the World Trade Organization (WTO). Baucus stated that "it would be outrageous to tolerate policies that hurt U.S. companies and workers just so [the United States] can meet an arbitrary political deadline for closing WTO talks." According to Baucus, "Russia has made some reforms" but still needs to adequately address: (i) effective intellectual property right (IPR) protection; (ii) market access to Russia's agricultural market that has thus far been limited by high tariffs and "burdensome" sanitary and phytosanitary regulations; (iii) restrictions on financial services; and (iv) market access to Russia's aerospace market. Baucus noted that "IPR protection in Russia is bad and getting worse" and that "for years, [U.S.] companies have been losing billions to intellectual property theft, and Russian authorities have done little to stop it."

Congressional concerns on Russia's accession have grown over the past several months. On December 7, 2005, the U.S. House Judiciary Subcommittee on the Courts, Internet, and Intellectual Property held a hearing on China and Russia's intellectual property rights (IPR) records where several members of the House committee voiced their opposition to Russia's accession to the WTO because of its poor IPR record. In November, Representative Darrell Issa (R-CA) introduced a non-binding House resolution (H. Con. Res. 230) that calls on the Russian government to provide greater IPR protections. The House passed the Resolution by a vote of 421 to 2; the Senate has not passed a similar resolution. Congressional fears are not unfounded: according to the International Intellectual Property Alliance (IIPA), Russia suffers from a "terrible copyright piracy rate second only to China," and Russian piracy rates are close to 70 percent, costing U.S. companies close to \$2 billion per year.

However, the advanced stage of the bilateral negotiations, and of Russia's accession process more generally, may limit the impact of Congress' IPR-related threats: the United States is one of six countries that have not completed bilateral talks with Russia. Congressional attempts to block countries' WTO accessions rarely cause major delays or changes in the final bilateral agreements. Furthermore, the Bush Administration has noted that IPR issues are much



less of a sticking point in the stalled negotiations than airplane tariffs, access to financial services markets and non-tariff barriers to U.S. agricultural goods.

Russian Economic Development and Trade Minister German Gref and United States Trade Representative (USTR) Rob Portman will meet in Hong Kong during the WTO's Ministerial Conference where Russia's WTO accession will most likely be discussed. Should there be further conflict in the bilateral talks, Russia would likely have to move its current goal of a mid-2006 accession into 2007.

### **Senate Finance Committee Holds Hearing to Review Agriculture Negotiator, Assistant Secretary of Commerce**

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### **Byrd Amendment Saved?: DeWine Offers Motion to Remove Repeal Language From Budget Bill**

Congressional sources indicate that the U.S. Senate should easily pass a December 15 motion instructing Senate conferees to reject a provision from the House version of the Budget Reconciliation Act (S. 1932) that would repeal the Continued Dumping and Subsidy Offset Act (CDSOA or the "Byrd Amendment"). Seventy-five Senators reportedly support the CDSOA and oppose its repeal. In offering the motion to instruct, Senator Mike DeWine (R-OH) stated that repealing the legislation would be a "grievous mistake," and that the CDSOA's goal is "punishing illegal trade practices and giving something back to the victims." The House and Senate will convene next week a conference committee to prepare the final version of the budget reconciliation bill. Among the issues the conferees will decide is whether to include the Byrd repeal language in the final version of the bill; the Senate version of the bill does not contain the Byrd Amendment repeal measure. Following the creation of a full conference report, each chamber will then vote on the final budget package.

The Byrd Amendment mandates the distribution of antidumping and countervailing duties to the U.S. companies that petitioned for trade relief. In March 2005, the World Trade

Organization (WTO) allowed seven WTO Members, including the EU, Canada and Japan, to impose retaliatory duties on U.S. imports based on the United States' failure to comply with a 2003 WTO Appellate Body (AB) decision that the law was inconsistent with global trade rules. Four of the seven WTO Members have retaliated, and India recently suggested that it might also impose such tariffs if the Byrd Amendment is not soon repealed. Should Congress repeal the Byrd Amendment, antidumping and countervailing duties (AD/CVD would go to the general treasury.

To the surprise of many, the Byrd Amendment repeal measure has (thus far) survived the legislative process despite overwhelming congressional support for the measure. Although non-binding, motions to instruct indicate both the Senate's position on an issue in conference and whether the Senate will ultimately accept or reject the final conference report. DeWine's motion shows that Senate supporters of the CDSOA are doing everything in their power to "save" the contentious law. Whether the Senate conferees will abide by the motion to instruct and refuse to include the CDSOA provision in the final bill is unclear. It is unlikely, however, that Senate Republicans will follow through with their threats and sacrifice a final budget bill that includes the CDSOA provision, as both budget reform *and* CDSOA repeal are Bush Administration priorities.

### **Grassley: TPA Might Not Be Renewed, Must Finish Doha Round Before TPA Expiration**

Senator Charles Grassley (R-IA), Chairman of the Senate Finance Committee, stated that it is "highly unrealistic" to expect that President Bush's Trade Promotion Authority (TPA) will be extended past its expiration date in 2007. Grassley also recommended that because TPA renewal was not certain, the Doha Round of the World Trade Organization (WTO) negotiations "should be completed before [TPA expires] so that Congress can consider implementing legislation under TPA procedures." Grassley noted that WTO Members' assumptions that "the U.S. Congress will, if WTO negotiations drag on past 2006, simply vote in 2007 to extend TPA for the limited purpose of concluding the Doha Round" is a "risky proposition." United States Trade Representative (USTR) Rob Portman has repeatedly expressed the same message, urging other WTO Members to complete multilateral trade negotiations before 2007 to allow sufficient time for "implementing legislation to be drafted and approved by Congress" before TPA expires.

Renewed as part of the Trade Act of 2002, TPA requires Congress to vote on trade agreements without amendment (an "up-or-down vote"). TPA is set to expire on July 1, 2007. After expiring under the Clinton Administration in 1994, TPA was finally renewed in 2002 following several failed attempts to renew the provision. Grassley noted that the TPA vote in 2002 was very close: the House passed the measure by a vote of 215-212. Grassley also noted that TPA renewal could be subject to amendment thus changing "U.S. negotiating objectives." He further opined that if TPA renewal were to slip into 2008, the legislation would not go before Congress because of presidential and congressional campaigns.

USTR Portman has echoed Grassley's comments. According to Portman, obtaining TPA renewal "might be hard to do," and he has warned that "WTO Members would be taking a

tremendous risk if they do not agree to a WTO deal in time for it to be sent to Congress in early 2007.” According to Portman, March or April 2007 is the deadline for submitting a WTO deal because TPA rules state that the United States must notify Congress of its intention to sign the Doha Agreement on April 1, 2007 and must sign the agreement by July 1, 2007 to be covered by the current TPA.

Both Congress and the Administration have consistently maintained that failure to complete the Doha package in sufficient time before TPA’s mid-2007 expiry would all but doom the round. Yet whenever it has been necessary in the past, the U.S. President has found a way to renew his negotiating authority, sometimes in the face of strong opposition. President Bush has a Republican majority in the House and the Senate, but 2007 is an election cycle away. Even assuming Republicans retain their majorities, obtaining TPA renewal would be a fight, as there will be difficult issues for the United States in any multilateral package – in trade remedy laws and agricultural support, for example. The question might then become whether in a pre-Election year the Administration would find the Doha package worth fighting for. In this regard, completion of the multilateral trade agreement in 2006 is highly preferable, but the United States’ declarations that a failure to conclude negotiations in 2006 would be the “death of the round” may be more of a means of motivating lagging negotiations than a realistic prediction of their fate.

### **Byrd Amendment Proponents Prepare for Conference Battle as CBP Publishes CDSOA Recipients**

Senate defenders of the Continued Dumping and Subsidies Offset Act (CDSOA), also known as the “Byrd Amendment,” are preparing to fight for the law during conference talks on the budget reconciliation package scheduled for the week of December 12<sup>th</sup>. The House included a provision repealing the controversial trade measure, which distributes antidumping and countervailing duties to the domestic companies that petitioned for trade relief, in its version of the “Deficit Reduction Act of 2005” (H.R. 4241), passed on November 18, 2005. The Senate passed its version of the deficit bill (S. 1932) in early November, but it does not contain the Byrd Amendment repeal provision. The House and Senate have convened a conference committee to reconcile the House and Senate versions and to prepare the final version of the budget bill. **Senator Mike DeWine (R-OH)** stated that he will likely offer a motion on December 14<sup>th</sup> to instruct conferees not to include the Byrd Amendment repeal provision in the final reconciliation conference report. **Sen. Larry Craig (R-ID)** stated that “using budget reconciliation protections to repeal the Byrd Amendment is completely inappropriate”; Craig is also urging conferees to reject the provision during conference.

The Senators will face a tough battle to remove the provision in conference, primarily due to the Administration’s pleas to Congress to repeal the CDSOA to cease World Trade Organization (WTO) Members’ application of retaliatory tariffs on U.S. exports worth over \$100 million. In March 2005, the WTO permitted seven WTO Members – including the EU, Canada and Japan – to impose the retaliatory duties based on the United States failure to comply with the WTO Appellate Body’s 2001 decision that the Byrd Amendment was inconsistent with global

trading rules. India has recently suggested that it might join other WTO Members and impose retaliatory measures if the U.S. Congress does not repeal the Byrd Amendment.

U.S. Trade Representative Rob Portman opined that the CDSOA's repeal might give "an added push" in moving WTO negotiations forward during the December 13-18 WTO Ministerial in Hong Kong. If Congress repeals the Byrd Amendment, AD/CVD duties would go to the general treasury rather than the domestic petitioners.

According to a Bureau of Customs and Border Protection (CBP) report, Byrd Amendment payments topped \$226 million in 2005. Over half of those distributions went to only five companies. The Timken Company – an Ohio-based ball bearings and steel tubing producer – topped the list of recipients, garnering close to \$81 million under the CDSOA. The law has been widely criticized for its uneven distribution of payments, and congressional sources indicate that the final version of the budget package will include the repeal provision. Passage of the final bill is almost certain.

### **Japan's FSC Recommends Lifting U.S. Beef Ban; Bilateral Beef Trade Resumes While USTR Presents Japan with Regulatory Reform Recommendations**

On December 8, 2005, Japan's Food Safety Commission (FSC) approved recommendations from its Prion Expert Committee to lift the country's ban on imported U.S. beef. Japan instituted the import ban two year ago after cows with bovine spongiform encephalopathy (BSE or "Mad Cow" disease) were found in the United States. Following the FSC's recommendation, Japan's Ministries of Health, Labor and Welfare and Agriculture, Forestry, and Fisheries adopted measures to resume beef imports. Sources indicate that both ministries circulated notices to their regional offices to accept beef import documentation beginning December 12<sup>th</sup>. The ministries noted that the resumption of beef imports only refers to beef aged less than 20 months; older beef still cannot enter the Japanese market. Sources also noted that the FSC recommendation includes several conditions, chief among them the United States' improving cattle surveillance and a restriction on feeding "cattle bone meal" to live animals. Both ministries will next issue a rule to open the beef market and send observers to the United States to witness U.S. Department of Agriculture (USDA) procedures in U.S. beef plants and warehouses.

On December 12, 2005, U.S. Secretary of Agriculture Mike Johanns announced that Japan will open its market to exports of U.S. beef from cattle 20 months and younger and added that Japan is allowing the resumption of exports of Japanese Kobe beef to the United States. He opined that it would have been difficult for the United States to continue blocking Japan's beef after the Bush Administration had urged Japan to open its market once there was "scientific justification," and that Japan's decision to resume beef trade should lead "Taiwan, South Korea, Hong Kong, China, Singapore and others to open their markets to U.S. beef." Although Johanns did not provide a timetable as to when beef trade would resume, he stated that it would be "a matter of days" before both countries begin trading in beef.

U.S. reactions to Japan's actions have been mixed. Secretary Johanns stated that he was "optimistic" that U.S. beef exports would resume shortly to Japan. Senator Max Baucus (D-MT),

ranking member of the Senate Finance Committee, also lauded the recommendation but criticized Japan's timing on the issue, stating that "the time for Japanese foot-dragging has finally come to an end." President of the American Meat Institute J. Patrick Boyle stated that the recommendation was a "small but important" move but noted that "the vast majority of the U.S. beef supply will remain ineligible for export to Japan due to the age limitation." He also stated that "it is imperative that the governments in both countries work expeditiously to review the restrictive age limitation" and modify them to reflect international guidelines.

Separately, United States Trade Representative (USTR) Rob Portman submitted to Japan an "extensive set of reform recommendations intended to further open the Japanese market to U.S. companies in key sectors." Recommendations included streamlining customs procedures, re-opening the Japanese market to U.S. beef and strengthening competition policy in the mobile and wire-line telecommunications sectors. Portman presented the list to Japan at a December 7<sup>th</sup> Trade Forum meeting between the two countries in Seattle, Washington. According to Portman, "the United States' concerns center on ensuring Japan's implementation of this reform does not unfairly disadvantage private companies, including U.S. companies, in the banking, insurance, and express delivery sectors." The recommendations also reflect U.S. concerns on developments in Japan's medical devices and pharmaceuticals sectors.

The United States and Japan exchange regulatory reform recommendations as part of the Regulatory Reform Initiative, launched by President Bush and Prime Minister Koizumi in 2001. The Initiative is a key part of the U.S.-Japan Economic Partnership for Growth, and the recommendations will go into an annual report to the two officials that specify reform measures to be taken by each country. Recommendations cover a range of issues, including information technologies, intellectual property rights, healthcare policies and agriculture.

## **President's Export Council Calls on U.S. to Reach WTO Agreements by End of 2006**

The President's Export Council (PEC) has called on the President to negotiate a strategy at the December 13-18 World Trade Organization (WTO) ministerial in Hong Kong to ensure that WTO Members achieve an "ambitious and balanced" agreement by the end of 2006. In a December 6<sup>th</sup> letter to President Bush, the PEC noted that current Doha Round negotiations have suffered "inevitable setbacks" but warned that progress made so far will not produce tangible benefits unless WTO Members produce a final agreement before the President's Trade Promotion Authority (TPA) expires in mid-2007. The PEC urged the administration to "lay the groundwork for a series of specific agreements" in several negotiating areas including agriculture and services and to complete these agreements at least six months before TPA would expire. This timetable, the PEC believes, would allow the U.S. Congress sufficient time to pass the agreements. PEC members also noted their "disappointment" with the EU's agriculture proposal in the letter. Deputy United States Trade Representative (USTR) Susan Schwab stated that the EU proposal could not be "described as ambitious by any normal human being."

The PEC advises the President on government policies and programs that affect U.S. trade performance and promote export growth. The PEC also provides a forum for discussing

trade-related problems among the business, industrial, agricultural, labor and government sectors. Executive Order of the President established the PEC in 1973; it consists of twenty-eight private sector members appointed by the President. The President of the Senate and the Speaker of the House appoint five Senators and five Members of the House of Representatives to the Council, respectively, while the Secretaries of Commerce, Agriculture, Energy, Homeland Security, Labor, State, and Treasury and the USTR are also members of the Council.

The letter comes as no surprise as the PEC is comprised of members who fully support the Administration's free trade agenda. In this vein, PEC's views on TPA echo the Administration's consistent position that TPA's mid-2007 expiry must be a driving force in the negotiations. Although it is quite possible that the U.S. Congress will renew TPA at that time, it appears that the Administration does not want to risk having a final Doha agreement depend on either TPA renewal or Congressional approval of the final agreement without the streamlined congressional procedures (no amendments and strict timeframe for passage) that TPA mandates. Moreover, TPA's expiry provides the Administration with a convenient deadline – real or not – that it can use to push the stagnant multilateral negotiations along.

### **U.S. ITC Releases Report on Potential GSP Modifications**

The U.S. International Trade Commission released a report on possible modifications to the Generalized System of Preferences (GSP) as part of its 2005 GSP annual review. The ITC drafted the report at the request of the United States Trade Representative (USTR). The report provides analysis on the elimination of import duties for GSP beneficiary countries with a focus on the GSP program's economic impact on U.S. industries. The report addresses the elimination of import duties for carrageenan and the impact of granting a waiver of competitive need limits to the Philippines for mangoes, to Brazil for softwood lumber, and to Turkey for travertine dimension stone. "Competitive need limits" represent the maximum import level of a product that is eligible for duty-free treatment under the GSP. Upon reaching the limit, the imports in question are considered "competitive," and benefits are no longer needed. Thus, the imports become ineligible for GSP treatment unless a competitive need waiver is granted. The ITC submitted a confidential version of the report to the USTR on November 10, 2005 after USTR requested an investigation on August 9, 2005.

### **Senators Call for Preservation of U.S. Trade Laws**

Senators John D. Rockefeller (D-WV) and Larry Craig (R-ID) sent a letter to President Bush calling on the Administration to "instruct U.S. negotiators to engage in a fundamental reevaluation of where [the United States is] in [World Trade Organization (WTO)] talks, and to redirect their efforts to ensure that that U.S. trade laws are fully preserved." The December 1<sup>st</sup> letter comes as U.S. trade officials prepare for December's WTO ministerial in Hong Kong. Both Senators called on President Bush to defend existing U.S. trade laws and "protect American workers from unfair trade practices such as dumping and illegal subsidies." The Senators' letter referenced a Senate resolution (S. Con. Resolution 55, "Expressing the sense of the Congress regarding the conditions for the United States to become a signatory to any multilateral agreement on trade resulting from the World Trade Organization's Doha Development Agenda

Round”) and stated that the resolution “makes clear that the current path of negotiations on fair trade rules is badly off track and must be radically altered if an acceptable agreement is to be reached.” The Senate passed the resolution on November 17<sup>th</sup>, and although non-binding, such resolutions reflect congressional interest in the Hong Kong ministerial’s outcome, particularly its potential impact on the U.S. antidumping and countervailing duty laws. The United States Trade Representative (USTR) will likely take the Senate resolution under advisement but will not significantly alter its negotiating positions.

### **USTR Fills Special Textiles Negotiator Position**

United States Trade Representative (USTR) Rob Portman announced on November 28<sup>th</sup> that Scott Quesenberry will assume the role of USTR’s Special Textile Negotiator. Quesenberry will assume his new position in time attend the World Trade Organization’s (WTO) December ministerial conference in Hong Kong. Under U.S. law, the position of Special Textile Negotiator does not require Senate confirmation. Quesenberry will be responsible for supervising U.S. trade negotiations involving textiles and apparel and expanding U.S. textile industry access to overseas markets.

Between 2002-2005, Quesenberry worked for Senator Elizabeth Dole (R-NC) in several positions, including Legislative Director, Chief Counsel and Policy Director. Quesenberry has also worked on several political campaigns and in the private sector. He is a 1993 graduate of Dartmouth College and received a law degree from Emory University School of Law in 1996. Portman stated that Quesenberry “will play a key role in helping USTR and the industry face future challenges and in exploring new markets overseas.” Prior to Quesenberry’s appointment, David M. Spooner served as USTR’s chief textile negotiator. In November, President Bush nominated Spooner to be the Assistant Secretary of Commerce for Import Administration.

### **President Signs Appropriations Prohibiting FTAs with Restrictions on Pharmaceutical Re-Importation**

On November 22, 2005, President Bush signed the “Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006” (H.R. 2862) containing provisions which bar future free trade agreements (FTAs) from including language that would restrict re-importation of pharmaceuticals from participant countries into the United States. The United States has signed FTAs with other countries – including Singapore and Australia – that contain such language. Many Members of Congress opposed the inclusion of re-importation restrictions, and the appropriations bill measure reflects that sentiment. Representative Anne Northup (R-KY) sponsored the measure. Senator Debbie Stabenow (D-MI) sponsored a similar provision in the Senate version of the bill.

Drug re-importation of pharmaceuticals allows customers the opportunity to buy pharmaceuticals at lower prices from foreign countries with cheaper drugs due to government price-caps or market factors. A recent trend for re-importers is to sell lower cost pharmaceuticals through websites. Congress is currently debating whether re-importation should be made legal. Although drug re-importation over the internet is a somewhat common practice, the practice is

illegal in the United States. However, many in Congress seek to change that practice. Ken Johnson, Vice President of the Pharmaceutical Research and Manufacturers of America (PhRMA) stated that the measure “undermines all U.S. knowledge-based industries” and opined that the provision would “open the door” to “unsafe, counterfeit prescription drugs.”

### **Treasury Report Finds China Not a “Currency Manipulator”**

The U.S. Treasury Department has not labeled China a “currency manipulator” in its Semiannual Report on International Economic and Exchange Rate Policies to Congress. The report, released November 28<sup>th</sup>, states that although China does not “meet the technical requirements” of a currency manipulator, its government will hopefully “do what they say they’re going to do” by letting the yuan appreciate against the dollar. The report notes that China’s foreign exchange system is “highly constricted,” but repeated promises from Chinese officials to allow the yuan to float helped Treasury determine that China was not manipulating its currency.

The 1988 Omnibus Trade and Competitiveness Act calls for reporting on “whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustment or gaining unfair competitive advantage in international trade.” The current report found that no major trading partner of the United States was a currency manipulator, including China. The report noted that the new exchange rate mechanism Chinese authorities adopted in July 2005 (when the Chinese Government appreciated the yuan by two percent) “allows for considerable flexibility and reflection of market forces.” The report also found that China’s promise to enhance exchange rate flexibility “has not occurred yet,” and that “since July 21, the [yuan] exchange rate has fluctuated in a very narrow trading range against the dollar.” The report notes that the “July 21 action was an important first step, but the initial adjustment and the subsequent movement of the [yuan] are not sufficient and do not represent fulfillment of the Chinese authorities’ commitment.” Treasury Secretary Snow stated that “it is imperative that China move towards greater flexibility as quickly as possible.”

As stated in previous reports, a negative Treasury determination as to Chinese currency manipulation will likely quash the Senate’s consideration of the “United States Trade Rights Enforcement Act” (H.R. 3238 and S. 1421), which the House passed in July 2005. Regardless, several Members of Congress have criticized the report and are promoting previously introduced legislation aimed at offsetting the “damage from an undervalued yuan.” Senators Lindsey Graham (R-SC) and Charles Schumer (D-NY) stated that Congress will focus on China’s “currency manipulation forcefully” and are sponsoring a bill (S. 295) that would place a 27.5 percent tariff on Chinese goods imported to the United States. Representative Benjamin Cardin (D-MD) sponsored the “Fair Trade with China Act” (H.R. 3306) that would direct the United States Trade Representative (USTR) to file a case with the World Trade Organization (WTO) on China’s alleged currency manipulation within 90 days. Upon the Treasury Report’s release, Cardin noted that the more the Bush Administration “continues its kid-glove policy” with China, the more the United States “gives [China] an artificial trade advantage.” Representative Donald Manzullo (R-IL) and Senator Olympia Snowe (R-MN) have introduced the Fair Currency



Practices Act of 2005 (H.R. 2208 and S. 984) that would more clearly define currency manipulation and make it “easier” for Treasury to label countries as currency manipulators. Treasury responded to the criticism by stating that they had kept Members of Congress informed of their intentions with the report and that Treasury “is not worried about [its] credibility.”

The report comes at an auspicious time for U.S.-China relations. Members of Congress have tried to pressure the Administration into demanding that China float its currency. Much of this rhetoric is aimed at reducing the United States’ growing bilateral trade deficit with China. On the other hand, President Bush and senior Administration officials, including Treasury Secretary Snow, continue to engage in “quiet diplomacy” with China in an effort to push for exchange rate and other reforms in a non-confrontational manner. Despite the Treasury report’s findings, some Members of Congress still feel that China is manipulating its currency and will continue to do so to the detriment of the U.S. economy. However, as long as the Administration pursues its “hands-off” strategy and there remain no formal findings of Chinese unfair trade practices, it is unlikely that Congress will pass any anti-China legislation in the near-term.

### **USTR Will Announce ATPA Review Results in December**

On December 1, 2005, the Office of the United States Trade Representative (USTR) will announce the results of its preliminary review of 2005 petitions and remaining 2003 and 2004 petitions under the Andean Trade Preference Act (ATPA). USTR received an ATPA petition from ExxonMobil on Peru in September and is still considering petitions from Human Rights Watch on Ecuador, the Labor Education in the Americas Project on Ecuador, the American Federation of Labor- Congress of Industrial Organizations (AFL-CIO) on Ecuador, and the Parsons Corporation on Peru. Under the ATPA, Bolivia, Ecuador, Peru, and Colombia must comply with certain eligibility criteria in order to receive trade preferences. USTR receives petitions to review certain practices in beneficiary countries to determine whether the countries are compliant with the ATPA’s eligibility criteria.

## **FREE TRADE AGREEMENTS**

### **Free Trade Agreements Highlights**

#### **USTR To Measure U.S. Industry Interest in Potential U.S.-Swiss FTA**

Assistant United States Trade Representative (AUSTR) for Europe and the Mediterranean Shaun Donnelly has called a meeting during the week of January 2<sup>nd</sup> to determine U.S. business groups' interest in a potential U.S.-Switzerland Free Trade Agreement (FTA). USTR officials will travel to Zurich in January to discuss the FTA with Swiss officials. Donnelly, who would likely lead the U.S. delegation in any FTA negotiations, stated that parties are in a pre-launch stage, but that the United States is ready to negotiate an agreement. Both countries are currently examining 15 major topics related to the potential FTA, focusing on agriculture, market access, sanitation, import licensing, and geographical indications.

Agriculture will likely be the most contentious issue during both the pre-launch phase and any eventual FTA negotiations. Consistent with its stance in the ongoing Doha Round of multilateral trade negotiations, the United States will seek increased agricultural market access from Switzerland. The Swiss agricultural market, however, is one of the most protected in the world, with tariff levels averaging almost 35 percent. Moreover, Switzerland is a member of the G-10 group of countries, which has consistently opposed ambitious market access concessions as part of the Doha agreement.

The United States is currently considering other potential FTAs with South Korea, Egypt, and Malaysia. For any potential FTA nation, USTR will examine during the pre-launch phase: (i) whether the country at issue has agreed to the United States' "pre-qualification" demands to change certain domestic regulations; and (ii) whether USTR reasonably believes that the FTA can be completed before the President's Trade Promotion Authority (TPA) expires in mid-2007. Switzerland's failure to meet U.S. pre-qualification demands on agricultural market access (or any other major issue) might lead USTR to believe that the parties could not complete FTA negotiations before TPA expires. Should this happen, USTR would likely not pursue an FTA with Switzerland, regardless of domestic industry support for an agreement.

The National Association of Manufacturers (NAM) has already indicated that a U.S.-Switzerland FTA is not as high a priority as are possible FTAs with South Korea, Egypt or Malaysia.

#### **Grassley Urges USTR to Notify Congress of U.S.-Peru FTA Under TPA Expiration Deadline**

Senate Finance Committee Chairman Charles Grassley (R-IA) urged Bush Administration Trade negotiators "not to wait for conclusion of negotiations with Colombia or Ecuador before formally notifying Congress of [their] intent to enter into a free trade agreement [FTA] with Peru." In a December 22<sup>nd</sup> letter to the United States Trade Representative (USTR), Grassley noted that Presidential Trade Promotion Authority (TPA) mandates that "ninety

calendar days must elapse before the United States can actually enter into a free trade agreement” and before Congress can pass the FTA’s implementing legislation. Grassley called on USTR to send formal notice of intent to enter into the Peruvian FTA as soon as possible and stated that USTR should not wait for the conclusion of negotiations with Colombia and Ecuador – the other Andean FTA member countries – to send the notice to Congress. Grassley also noted that “should negotiations with Colombia and Ecuador conclude in the short-term,” USTR can send a second notice of intent that would allow Congress to consider all three agreements together.

On December 7, 2005, the United States and Peru completed an FTA that would grant immediate duty-free access to certain goods traveling between the two countries and phase out remaining tariffs in ten years. In November, U.S., Colombian, and Ecuadorian trade officials called off FTA negotiations and tabled them until 2006. The officials have yet to set a date to resume negotiations, but the United States has maintained that the problems with the Colombian and Ecuadorian FTAs will not hinder the Peruvian agreement.

With TPA set to expire in mid-2007 and with its renewal in doubt, USTR seeks to conclude all FTAs – including congressional passage – before July 2007. Although the completed Peruvian FTA is, by itself, in little danger of missing TPA’s 2007 deadline, its grouping with the other Andean FTAs could jeopardize its passage should the United States, Colombia and Ecuador fail to conclude FTA negotiations in the first half of 2006. Grassley’s statements, therefore, indicate that he and other “free traders” in Congress wish to consider completed FTAs as soon as possible in order to avoid the possibility of any TPA-related problems caused by delay. Grassley’s desire for independent consideration of the Peruvian FTA also provides pressure on Colombian and Ecuadorian negotiators who may have believed that Congress would only consider the Peruvian FTA with the other Andean FTAs. Knowing that Congress will move on without Colombia and Ecuador might motivate the countries’ trade officials to return to the negotiating table for fear of being left out of any final Andean agreement.

### **President Bush Designates African Countries Eligible for Benefits Under AGOA**

On December 22, 2005, President Bush released a list of 37 African countries that are eligible for economic and trade benefits under the African Growth and Opportunity Act (AGOA). The countries are Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, Republic of Congo, Democratic Republic of Congo, Djibouti, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda and Zambia. The President added Burundi to, and removed Mauritania from, the 2006 list.

The AGOA was signed into law on May 18, 2000 as Title 1 of “The Trade and Development Act of 2000.” The Act offers incentives and benefits to African countries that continue to create a market-based economy and to improve the rule of law, free trade, poverty-reducing economic policies and labor protections. The President, through close consultation with the Office of the United States Trade Representative (USTR), makes an annual

determination of AGOA beneficiary countries. According to USTR's annual report to Congress on AGOA, "[I]n 2004, over 98 percent of U.S. imports from AGOA eligible countries entered duty-free," and "U.S. imports of AGOA products are growing, with especially notable increases in imports of non-fuel goods; the United States imported more than \$26 billion in merchandise duty-free under AGOA in 2004, an 88 percent increase from 2003, largely due to an increase in oil imports."

### **U.S.-Morocco FTA Will Enter Into Force January 1, 2006**

The Office of the United States Trade Representative (USTR) has stated that the U.S.-Morocco Free Trade Agreement (FTA) will enter into force on January 1, 2006 as scheduled. According to USTR, Morocco "has completed the necessary internal process to implement the pact" by amending Moroccan labor laws (*e.g.* increasing both the minimum employment age and minimum wage) and changing Moroccan domestic law to "reflect[] the commitments Morocco took under the agreement." A USTR spokesperson stated that "this agreement will expand markets for American farmers, ranchers and businesses and provide greater choices for consumers" and "will also strengthen our trading relationship with the Middle East."

Negotiations on a U.S.-Morocco FTA began in January 2003 and concluded in March 2004. Congress passed the Agreement in July 2004, and President Bush signed the FTA in August 2004. The agreement is part of the Bush Administration's larger goal of creating a U.S.-Middle East Free Trade Area (USMEFTA) by 2013. Morocco joins Israel and Jordan as USMEFTA countries with FTAs in force. Congress has approved the U.S.-Bahrain FTA, which has yet to enter into force; the United States and Oman completed FTA negotiations with Oman in November.

### **Egypt Trade Minister Says U.S.-Egypt FTA Could Start Very Soon**

Egyptian Trade Minister Rachid Mohamed Rachid stated that the United States and Egypt could announce the formal start of free trade agreement (FTA) negotiations by the end of January 2006. Rachid made the comments following a meeting between Egypt and United States Trade Representative (USTR) Rob Portman at the World Trade Organization (WTO) Ministerial Conference in Hong Kong. According to Rachid, Portman "has assured Egypt that it is ready to begin free trade talks." Rachid also noted that Portman would officially visit Egypt in late January. The Office of the USTR did not comment on Rachid's statements, but sources indicated that in previous meetings, Portman has stated that the United States "is not quite ready" to commence FTA negotiations. The United States criticized the Egyptian government's handling of recent Egyptian elections and the protests surrounding them. Sources opined that the violence could "prompt the United States to hold off announcing" negotiations with Egypt.

For each potential FTA the United States decides to enter – Egypt included – USTR will examine: (i) whether the country at issue has agreed to the United States' "pre-qualification" demands to change certain domestic regulations; and (ii) whether USTR reasonably believes that the FTA can be completed before the President's Trade Promotion Authority (TPA) expires in mid-2007. The United States has expressed concerns over Egyptian policies related to agriculture, services, industrial market access, textiles, customs rules and intellectual property

rights. Although Rachid's statements likely indicate that Egypt has made progress on these issues, lingering human rights questions might derail Egypt's efforts to satisfy U.S. pre-qualification conditions. If Egypt cannot quickly assuage the United States' human rights (and other) concerns, the countries' ability to complete FTA negotiations before TPA expires may be in doubt.

### **Grassley: South Korea Has Overly Restricted Agriculture Market**

Senate Finance Committee Chairman Charles Grassley (R-IA) issued a December 15 response to South Korean farmers' protests of the World Trade Organization (WTO) Ministerial Conference in Hong Kong. Grassley stated that the farmers' opposition to agricultural liberalization achieved through a WTO Agreement must be "put in perspective," and that "one of the goals of the Doha Round is to remove market access barriers to agricultural products, including those of wealthier countries like South Korea." Grassley also noted that "South Korea has one of the most restricted agricultural markets in the world" and cited its 66 percent average agricultural tariff rate as evidence of this restriction, comparing it to the United States' 12 percent tariff average rate on agricultural products. According to Grassley, South Korea's closed market "adversely impacts U.S. farmers," and South Korea must make concessions on agriculture if WTO Members "are going to conclude the Doha Round."

Although the United States and South Korea have expressed a desire to begin bilateral Free Trade Agreement (FTA) negotiations in early 2006, U.S. negotiators have stated that South Korea must commit to reform its agricultural market access policies before such talks can begin. The Office of the United States Trade Representative (USTR) has consistently maintained that it will not initiate FTA negotiations if it does not believe it can complete an agreement before Presidential Trade Promotion Authority (TPA) expires in mid-2007. South Korea's recalcitrance on agriculture during the Doha negotiations might discourage USTR from believing it can achieve the market access concessions it desires before the TPA deadline. Moreover, USTR confers with Congressional leaders regarding the eventual passage of an FTA before the agency will agree to begin bilateral FTA negotiations. Any indication that South Korea opposes agricultural reform might dissuade Grassley and other congressional leaders from giving USTR their "blessing" on the bilateral FTA.

### **Senate Passes U.S.-Bahrain FTA, Sends Legislation to President for Signature**

On December 13, 2005, the U.S. Senate approved by voice vote the implementing legislation for the U.S.-Bahrain Free Trade Agreement (FTA) (S. 2027). The bill will now go to President Bush for his approval. Under the FTA, 98 percent of Bahrain's agricultural tariffs will immediately go to zero, as the agreement excludes alcohol and tobacco. Bahrain will phase out its remaining tariffs over the next ten years. The United States will grant immediate duty-free access to imports from Bahrain of consumer, industrial, agricultural and textile and apparel goods. Qualifying textiles and apparel must contain either U.S. or Bahraini yarn, but the agreement provides for a "temporary transitional allowance" for textiles and apparel that do not meet the rules of origin requirements in the short-run. The FTA's terms also require Bahrain to

“further open its market to U.S. banks and service providers” and note that the United States will monitor Bahrain’s promised labor reforms.

Congressional supporters of the Bahrain FTA lauded its passage. Ranking Democrat on the Senate Finance Committee Sen. Max Baucus (D-MT) stated that the agreement would “open markets for U.S. exports of motor vehicles and parts, medial equipment, and refrigeration equipment” and expressed hope that agricultural exports will rise under the agreement. Senate Finance Committee Chairman Charles Grassley (R-IA) praised the FTA’s market access provisions and its comprehensive coverage of all services sectors.

On November 18, both the House Ways & Means and Senate Finance Committees unanimously approved the legislation, and the House approved the agreement on December 7 by a vote of 327 to 95. President Bush will likely sign the FTA into existence by the end of 2005, as the agreement will further the Administration’s goal to create a U.S.-Middle East Free Trade Area (USMEFTA) by 2013. The FTA’s swift and relatively easy passage in Congress stands in stark contrast to this summer’s bitter fight over the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA). The agreements’ different political courses are likely due to the geopolitical importance of the Bahraini Agreement and the USMEFTA, rather than any economic advantages that the U.S.-Bahrain FTA might possess over DR-CAFTA.

### **Egypt Trade Minister Sees January as Likely Date to Announce U.S.-Egypt FTA**

Egyptian Trade Minister Rachid Mohamed Rachid stated that the United States and Egypt will likely issue “an announcement in January” that both countries are formally initiating free trade agreement (FTA) negotiations. Rachid’s statement followed a December 13 meeting with United States Trade Representative (USTR) Rob Portman while both were in Hong Kong for the World Trade Organization’s (WTO) Ministerial Conference. According to Rachid, Portman has already begun consultations with certain Members of Congress to discuss the FTA’s feasibility, and USTR must hold inter-agency discussions within the Bush Administration. Rachid stated that Egypt had thus far not “[heard] anything negative” emerge from the meetings. He also opined that the FTA could be concluded in 2006 if negotiations began in January.

The United States has hinted that it may enter into formal bilateral FTA negotiations with Egypt, South Korea, Malaysia and Switzerland. For each potential FTAs, the United States will examine two factors before deciding whether to enter into formal talks: (i) whether the country at issue has agreed to the United States’ “pre-qualification” demands to change certain domestic regulations; and (ii) whether USTR reasonably believes that the two sides can complete the FTA before TPA’s mid-2007 expiry. Rachid’s comments indicate that Egypt has met or will soon meet the first condition (areas of U.S. concern included agriculture, services, industrial market access, textiles, customs rules, and intellectual property rights), and that both sides are relatively certain that they can conclude the FTA before TPA expires. South Korean President Roh Moo-hyun has recently made similar forecasts about the initiation of bilateral FTA negotiations. USTR has thus far remained silent on the issue but stated that it will announce its decision on each of the four countries by the end of December 2005.

## **January 1 DR-CAFTA Implementation Unlikely, USTR Cites Compliance Issues**

The Dominican Republic-Central American Free Trade Agreement (DR-CAFTA), scheduled to enter into force on January 1, 2006, is unlikely to do so because of U.S. complaints over agricultural market access, intellectual property protection and legal conflicts related to implementation of the agreement in the CAFTA countries. The Office of the United States Trade Representative (USTR) stated that the Central American countries under the agreement must change their domestic laws to “reflect the commitments they undertook in the trade agreement.” Several Central American countries, however, disagree, maintaining that DR-CAFTA obligations “prevail over [domestic] laws” and thus make domestic law alteration unnecessary. USTR issued a statement that notes that all DR-CAFTA signatories are still working towards the goal of implementation and that the USTR is “ensuring proper compliance and implementation.”

According to the USTR, El Salvador has proved the most compliant with the agreement and recently passed a “satisfactory” intellectual property rights (IPR) law. Meanwhile, Guatemala’s pending IPR law has proved “problematic” for the United States because it “includes too many exemptions for CAFTA data exclusivity provisions” that require the agreement’s signatories to prohibit generic pharmaceutical makers from access to clinical trial data generated by brand name pharmaceutical companies. USTR also stated that Guatemala “is lagging” in implementing trademark and copyright provisions.

Implementation monitoring was a key aspect of USTR’s “sell” to the U.S. Congress during its consideration of DR-CAFTA’s implementing legislation. USTR’s actions indicate that the agency will live up to its monitoring promises and that the United States will not stop pursuing its key negotiating objectives upon congressional passage of an FTA.

## **House Passes U.S.-Bahrain FTA Legislation, Senate Passage Expected Before Year-End**

On December 7, 2005, the U.S. House of Representatives approved implementing legislation for the U.S.-Bahrain Free Trade Agreement (FTA) (H.R. 4340). House Members passed the FTA by a vote of 327 to 95. Both Republicans and Democrats strongly supported the FTA and expressed satisfaction with Bahrain’s commitments for labor improvements and its withdrawal from the Arab League boycott of Israel. FTA supporters noted that the agreement would serve as a model for other bilateral agreements in the region and advanced the Administration’s goal of creating a U.S.-Middle East Free Trade Area (USMEFTA) by 2013. The legislation will next move to the Senate where sources expect the Senate to pass the FTA before it recesses at the end of December.

United States Trade Representative (USTR) Rob Portman lauded the bill’s passage and stated that “U.S. farmers will also find additional opportunities [through the FTA], especially in meats, fruits and vegetables, cereals, and dairy products.” Portman noted that Bahrain has made broad commitments to “open its services market wider than has any previous FTA partner, creating a wide array of opportunities in services sectors such as banking and securities,

insurance, and telecommunications, audiovisual, express delivery, distribution, healthcare, architecture and engineering.” The FTA is the first trade agreement the United States has pursued with a Gulf country and the third with an Arab country. Under the terms of the agreement, the United States will immediately grant duty-free access on 100 percent of Bahrain’s current exports to the United States, including textiles and apparel and agricultural products. The agreement also requires Bahrain to open its market to U.S. services and states that the United States will closely monitor Bahrain’s pledges on labor improvements.

The FTA has certainly benefited from Congress’ extended calendar. Sources previously opined that Congress would not have time to vote on the agreement before the end of the 2005 term, but its recent schedule extensions- due mainly to discord over appropriations measures - have allowed the FTA to sneak onto the 2005 congressional agenda. Passage of the agreement in 2005 now appears all but certain. Under the terms of the agreement, it will enter into force after congressional passage; the exact timing is unknown.

### **United States and Peru Conclude FTA Negotiations**

On December 7, 2005, the United States and Peru completed a free trade agreement (FTA) that would grant immediate duty-free access to certain goods traveling between the two countries and phase out remaining tariffs in ten years. United States Trade Representative (USTR) Rob Portman stated that “a Trade Promotion Agreement with Peru (TPA) will generate export opportunities for U.S. companies, farmers, and ranchers and help create jobs in the United States.” Portman also noted that the FTA “can bring Peru significant opportunities for economic growth.” The parties negotiated the agreement as part of the larger Andean FTA, but Peru is the only Andean country to have completed its negotiations with the United States. Portman expressed hope that the United States and the remaining Andean countries, namely Colombia and Ecuador, can complete their FTA negotiations.

Under the agreement, U.S. exports of consumer and industrial goods will receive immediate duty-free treatment, and the countries will phase-out all remaining tariffs within ten years of when the FTA enters into force. Two-thirds of U.S. agricultural products will also receive immediate duty-free access and remaining agricultural tariffs will be phased-out within 18 years. Many Peruvian products already receive duty-free treatment upon entering the United States under the Andean Trade Preference Act (ATPA), although Portman noted that the U.S.-Peru FTA will “make duty-free treatment a two-way street.” The agreement does not contain trade preference levels for textiles, nor does it contain cumulation provisions that would allow Peru to use inputs from other countries that have FTAs with the United States and to qualify still for preferential treatment. Under the agreement, Peru is required to remove its barriers to trade in services and “provide a secure, predictable framework for U.S. investors operating in Peru.” The agreement also contains provisions for five years of “data protection” on goods including pharmaceuticals – a contentious issue during negotiations.

In November, U.S., Colombian, and Ecuadorian trade officials called off FTA negotiations and tabled them until 2006. No date has been set for continued negotiations with Colombia and Ecuador, but the United States has maintained that these negotiations’ problems



will not hinder the Peruvian agreement. Under U.S. Presidential Trade Promotion Authority (TPA), the U.S.-Peru FTA will next move to Congress where the House Ways & Means and Senate Finance Committees will likely hold hearings on the agreement and conduct a “mock markup” of draft implementing legislation. The Administration will then submit formal implementing legislation to Congress, which must vote on the agreement, without amendment, within 90 legislative days. The timetable for congressional consideration of the FTA is uncertain.

### **U.S.-Taiwan TIFA Pushed Forward While Potential FTA Uncertain; Similar Situation with Pakistan**

The United States will continue trade and investment framework agreement (TIFA) talks with Taiwan, but prospects for a U.S.-Taiwan Free Trade Agreement (FTA) appear dim in the short term. Assistant United States Trade Representative (USTR) for China Timothy Stratford stated that the two countries must resolve contentious issues such as intellectual property rights (IPR) protection, telecommunications and a ban on U.S. beef imports before FTA negotiations could begin. During a press briefing on December 2<sup>nd</sup>, Stratford commended Taiwan’s improvements in IPR enforcement and stated that the United States is working with Taiwan to create an agenda for TIFA meetings. Stratford, however, did criticize Taiwan for its lack of support in World Trade Organization (WTO) agriculture negotiations. Given that Taiwan is a member of the Group of 10 (G-10) countries with the most protected and highly subsidized farm sectors in the world, sources indicated that Taiwanese trade officials have been less than “forthcoming” in the multilateral agriculture. Stratford stated that Taiwan’s lack of support in WTO negotiations, “little interest in the United States for a U.S.-Taiwan FTA,” and critical timing concerns limit the United States’ pursuit of a FTA with Taiwan. Before entering into formal FTA negotiations, U.S. trade negotiators examine whether the FTA in question can be completed by mid-2007 when the President’s Trade Promotion Authority (TPA) is set to expire. If they do not believe that this deadline can be met, they will not begin negotiations.

U.S. negotiators also met with their Pakistani counterparts during the week of November 28<sup>th</sup>. The two sides resolved to intensify negotiations on a bilateral investment treaty (BIT) and to strengthen relations under the U.S.-Pakistan TIFA. The Office of USTR, however, stated that the United States would not be pursuing an FTA with Pakistan until Pakistan “liberalized its economy more” and resolved outstanding textiles and apparel issues with the United States. USTR has highlighted the BIT as a tool that “can play an important role in strengthening Pakistan’s economy.”

TIFAs are, in essence, limited agreements that establish “joint councils of trade and economic officials to discuss trade issues.” The U.S. push for TIFAs with Taiwan and Pakistan indicates that the United States does not view Taiwan and Pakistan as ready to enter into formal FTA negotiations with the United States until the countries can resolve several outstanding issues. The United States has followed a similar “pre-qualification” mandate for four other nations – South Korea, Malaysia, Egypt and Switzerland – with which it has entered into discussions about potential bilateral FTAs. USTR’s continued adherence to this strategy indicates that the United States believes it can extract valuable concessions from FTA candidates *before* actual negotiations begin. Such a game plan also provides evidence that the U.S. theory

of “competitive liberalization” has been successful, as nations compete for a spot at the United States’ “FTA negotiating table” by making pre-negotiation concessions.

### **United States and Peru Continue FTA Talks**

U.S. and Peruvian negotiators will be meeting in Washington, DC the week of December 5<sup>th</sup> to continue Free Trade Agreement (FTA) negotiations. The United States previously held talks with Peru, Colombia, and Ecuador in November as part of the U.S.-Andean FTA. Negotiators had hoped to finish negotiations before Thanksgiving but unable to conclude, Colombia and Ecuador delayed further negotiations until early 2006 while Peruvian negotiators decided to re-convene with their U.S. counterparts in December. The United States Trade Representative (USTR) stated that the United States is closer to completing talks with Peru than it is with the other two Andean countries although no comment was made as to whether the United States would conclude an FTA with Peru and wait to include Colombia and Ecuador later on. Sources note that agriculture and intellectual property rights (IPR) still remain the most contentious issues.

### **United States Updates the Status of Potential FTAs, Will Decide on Each Before End of Year**

In recent months, the United States has entered into discussions with four nations – South Korea, Malaysia, Egypt and Switzerland – on the possibility of entering into formal bilateral Free Trade Agreement (FTA) negotiations. The Office of the United States Trade Representative (USTR) stated that it will decide by the end of 2005 whether to enter into FTA negotiations with each country. Critical to this decision is the Bush Administration’s belief that it can complete the agreements before Presidential Trade Promotion Authority (TPA) expires in July 2007. If U.S. officials do not think they can finish an agreement in that timeframe, they will not initiate formal negotiations. We provide an update on each potential FTA below:

- **U.S.-South Korea FTA:** The primary obstacles to initiating FTA negotiations between South Korea and the United States appear to have diminished over the last two months. The Korean Government is close to dismantling Korea’s screen quota system (requiring 40 percent of all movies shown in Korean cinemas to be Korean), the main reason for lack of movement on the FTA. Furthermore, the new Korean Ambassador to the United States has stated that he wishes to conclude an FTA with the United States as soon as possible. However, several market access issues – especially in agriculture and the automotive sector – still must be resolved.
- **U.S.-Malaysia FTA:** U.S. and Malaysian Government officials met for the third time on October 10, 2005 in Kuala Lumpur under the Trade and Investment Framework Agreement (TIFA) signed in May 2004. They discussed progressing negotiations on increased market access in the automotive, financial services and the agricultural sectors. The sides also discussed improving intellectual copyright protections, increasing efficiency

in customs procedures, and addressing investment concerns. Trade capacity building and cooperation projects in the areas of customs, intellectual property rights (IPR) enforcement, and sanitation were topics of negotiations, with the goal of strengthening trade relations. Furthermore, the United States and Malaysia worked on coordinating Asia Pacific Economic Cooperation (APEC) and World Trade Organization (WTO) issues to make them run more smoothly. The third round was described as productive, and officials hope that the fourth round will take place early in 2006.

- **U.S.-Egypt FTA:** On November 30<sup>th</sup>, Egyptian Trade Minister Rachid Mohamed Rachid stated that the United States and Egypt “should be able to conclude technical work” in the following weeks. USTR Rob Portman stated that the United States was “getting close” to announcing a FTA with Egypt but was “not quite there yet.” According to both officials, no outstanding trade disputes exist between the two countries that would hold up negotiations. According to Rachid, 14 working groups met in Washington between November 30-December 1 and concluded their work in all 14 areas by December 1<sup>st</sup> by defining U.S. and Egyptian positions on a variety of issues, identifying the size of the gap in negotiations and determining the agenda for future FTA negotiations. Working group discussions included issues in agriculture, services, industrial market access, textiles, customs rules, and intellectual property rights among other topics. Rachid also stated that Egypt would not face the same problems Bahrain did in its FTA with the United States with regards to labor because Egypt’s labor standards are already high and adhere to International Labor Organization (ILO) standards.
- **U.S.-Switzerland FTA:** Assistant USTR Shaun Donnelly, who would likely lead the U.S.-Swiss FTA negotiations, stated that all parties are in a pre-launch stage, but that the United States is ready to negotiate an agreement. Both countries are examining 15 major topics related to the potential FTA, focusing on agriculture, market access, sanitation, import licensing, and geographical indications.

### **Japan and U.S. Will Sign MRA for Telecom Equipment**

The United States announced that it will sign a mutual recognition agreement (MRA) with Japan on safety and communication protocols of cellular phones and telecommunications equipment. Officials did not state when the two countries would sign the MRA but noted that Japan plans to implement the agreement in 2006. The MRA would allow U.S. telecommunications companies to be relieved of Japanese certification of their products for distribution in Japan. Currently, Japanese certification organizations must issue certificates to U.S. companies for them to distribute their products in Japan. Certification costs per product can range from several thousand dollars to \$10,000. Japanese officials also acknowledged that the

examination and certification process is “cumbersome” and inefficient. Japan has similar MRAs with the EU and Singapore for telecommunications products.

### **Peru, Colombia and Ecuador Call Off U.S.-Andean FTA Talks; Push for Further Negotiations in December, January**

Both U.S. and Andean delegations met in Washington, DC from November 21-23, 2005 with the hopes of concluding negotiations by November 23<sup>rd</sup>. Sources report, however, that the U.S. delegation was unable to conclude negotiations with Peru, Colombia and Ecuador and note that Colombia and Ecuador decided to break off their free trade talks with the United States, stating that more rounds of talks are needed. Colombia’s chief negotiator, Hernando Jose Gomez, stated that Bogotá and Washington might resume talks before the end of 2005 to finish the FTA. Ecuador’s chief negotiator, Manuel Chiriboga, stated that Ecuador and the United States had agreed to meet in early 2006 to finish the deal. Sources indicate that agriculture and intellectual property rights (IPR) remained the most contentious issues and were unresolved during the negotiations. Peru remains the sole Andean country that is close to concluding FTA negotiations with the United States although Peruvian delegates postponed further talks with the United States until December. Peruvian officials stated that they would like to conclude an agreement with the United States in the coming weeks.

## AFRICA

### Cato Institute Hosts Panel on the Effects of Trade Liberalization in Africa

#### SUMMARY

On December 6, 2005, the Cato Institute hosted a panel on trade liberalization's effects on sub-Saharan African economies. Representatives from non-profit organizations and the private sector gave their **on-the-record** assessments of trade liberalization in economically developed countries and whether the practice would help African nations grow and eradicate poverty. We review here those assessments.

#### ANALYSIS

On December 6, 2005, the Cato Institute hosted a panel on trade liberalization's effects on sub-Saharan African economies. Representatives from non-profit organizations and the private sector assessed trade liberalization in developed countries and how the practice might impact less-developed sub-Saharan African nations. The **Cato Institute's Project on Global Economic Liberty** hosted the panel and asked speakers to focus their statements on whether trade liberalization would help African nations eradicate poverty and promote economic growth:

- **Marian Tupy, Assistant Director of the Project on Global Economic Liberty** discussed the findings of his December 6, 2005 report ("Trade Liberalization and Poverty Reduction in Sub-Saharan Africa") on the effects of trade liberalization in Western nations on sub-Saharan Africa (SSA). According to Tupy, "SSA is poor because of political instability and because of a lack of policies and institutions, such as private property rights, that are necessary for the market economy to flourish." He noted that trade liberalization could help increase intra-SSA trade by 54 percent and account for over 36 percent in welfare gains, but that African leaders are "hypocritical" in calling out for "greater access to global markets while rejecting trade openness at home." Tupy stated that SSA protectionism perpetuates African poverty, and that SSA leaders must pursue immediate free-trade relations with other SSA countries and with the rest of the world.<sup>1</sup> Tupy highlighted Botswana as an example of an SSA nation that has reaped the rewards of free trade, exhibiting growth and political stability over the past several years after it unilaterally opened its markets. Tupy also stated that "blaming African poverty on forces beyond the control of Africa's political elites takes the spotlight away from decades of failed economic policies, wholesale looting of Africa's wealth, and loss of countless lives to political repression and ethnic conflicts." He concluded by stating that

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<sup>1</sup> According to Tupy, tariff rates between SSA nations are higher than tariff rates between SSA nations and the rest of the world.

global trade liberalization can greatly benefit SSA nations if their leaders would first open trade among SSA countries.

- **Julius Coles, President of Africare** stated that “some arguments can be made for protectionism” and opined that the world should move towards free trade, but that African nations should still maintain protectionist practices in order to “further develop their young economies.” Coles stated that unlike the economies of industrialized nations, those of SSA nations were still young because many achieved independence only within the last 50 years. “Unlike industrialized countries that had 200 years of protectionism to help develop their economies,” Coles noted that African nations have not had the same amount of time to develop their economies and should thus continue some protectionist practices to eradicate poverty and “achieve strong footing” for their markets. He also opined that the “gains from trade liberalization seem like small gains to the average African” and that natural calamities and disease are also accountable for SSA’s poverty. Coles concluded that SSA nations need comprehensive trade reform but should continue short-term protectionism to enhance and develop their fledgling economies.
- **Robert Guest, Washington Correspondent to *The Economist*** agreed that SSA was poor “primarily because it lacks institutions for its markets to flourish,” and that political instability played a “huge part” in making Africa poorer. Guest noted that African leaders find it difficult to reconcile the positive and negative aspects of trade liberalization because “free trade shows widely-dispersed benefits over the long-run and heavily concentrated damages in the short-run.” Guest did opine, however, that “protectionism does not work” because it serves as a “form of corruption that creates tariff barriers” and thus impedes the flow of goods. Guest stated that protectionism allows African leaders a “license to rip off their fellow country men.”

### ***OUTLOOK***

Tupy’s report concludes that African nations can achieve significant gains through trade liberalization but only if their political leaders first open their markets. Coles counters that the relative youth of SSA nations provides a sound rationale for these countries to maintain protectionist barriers so that they can insulate their fledgling economies and infant industries. As Guest noted, however, these protectionist measures are mainly in the form of SSA intra-state tariffs that injure Africans more than do tariffs from the developed world.

Economist Friedrich Hayek’s theory that central economic planning in the hands of a small political elite is “inimical to freedom” and limits both economic and social growth rings true in today’s Africa: a small political elite controls the state and uses high tariffs and complex bureaucracy to line its own pockets at the African people’s expense. In this regard, Tupy is right

to assume that African nations are poised to reap the benefits of trade liberalization but only if they first remove intra-continent trade barriers.

The current World Trade Organization (WTO) Doha Development Round should offer Least Developed Countries (LDCs), many of them in Africa, new opportunities to open their economies. LDCs, however, have thus far resisted market liberalization in the round, using the WTO's mandate for "special and differential treatment" of developing countries to shield themselves from significant tariff reduction and other market access commitments. It is unlikely that many LDCs will change their views on these issues because their high tariffs provide an enormous source of government revenue that often goes directly to the nations' leaders and their political allies because of widespread corruption.

In an effort to integrate African nations into the global economy, the United States is pursuing a Free Trade Agreement (FTA) with the Southern African Customs Union (SACU - South Africa, Botswana, Lesotho, Namibia and Swaziland), but negotiations have stalled while the two sides attempt to resolve differences in agriculture and textiles. The United States' further involvement in the region could spur more interest in the continent and encourage FTAs between SSA nations and the developed world. As it stands, however, the U.S.-SACU FTA is not among USTR's priorities, and it is unclear when the United States – and other developed countries – will take a more proactive role in bilateral or regional agreements with African nations. The economic gains, however, from these FTAs would be insignificant compared to those from an ambitious Doha Round agreement that calls for substantial market access openings for not only developed nations, but also their developing counterparts, including those in SSA. Whether African leaders will agree to make these commitments remains to be seen.

## MULTILATERAL

### Outcome of the Sixth WTO Ministerial Conference: Implications for U.S. Negotiating Objectives

#### SUMMARY

The World Trade Organization (WTO) held the sixth session of its Ministerial Conference in Hong Kong from December 13-18, 2005. After six days of complex and difficult negotiations, ministers from the WTO's 149 Member governments approved the Ministerial Declaration late on 18 December putting, in the words of Director-General Pascal Lamy, the Doha Round trade talks "back on track". Based on the content of the Ministerial Declaration dated December 18 ("the Declaration"), we assess below the outcome of the Ministerial Conference in priority U.S. negotiating areas vis-à-vis U.S. objectives in those areas.

#### ANALYSIS

##### I. Main U.S. Negotiating Areas: Did the United States Achieve Its Objectives?

The Ministerial Declaration as expected does not contain specific numbers and formula structures for cutting subsidies and tariffs. Members had recognized before coming to Hong Kong that divergence in the toughest negotiating issues was too significant to allow negotiators to agree on 'full modalities' at the Ministerial. Instead, ministers agreed on general parameters to guide the development of the modalities on agriculture and non-agricultural market access (NAMA), and set themselves an April 2006 deadline for finalizing them. In services, the text of the relevant Annex proved contentious, particularly with regard to the adoption of "plurilateral" approaches to the negotiation on specific sectors. Although Annex C on services takes the form of an "agreed text", the U.S. among other countries with high ambition in the services negotiations consider the final text to have been diluted. Agreement on the text on Trade Facilitation did not prove problematic with the December 7 draft being approved without any serious objection.

##### A. Agriculture

Text on agriculture appears in the main body of the Declaration as well as in Annex A. The Annex however takes the form of a status report by the Chair of the agriculture negotiations rather than agreed text.

##### 1. **Export Competition**

**Objective:** The U.S. had called for the elimination of export subsidies by 2010 as well as the establishment of disciplines on certain other forms of export support such as: (i) establishing rules pertaining to export credit programs; (ii) installing new disciplines on State Trading Enterprises that would end monopoly export privileges, prohibit export subsidies and improve transparency; (iii) ending discriminatory tax provisions that encourage processed food exports; and (iv) establishing disciplines on food aid shipments that would guard against commercial displacement.



**Outcome:** The Declaration makes note of agreement among Members to ensure that “parallel” elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect will be completed by the end of 2013. The EU resisted heavy pressure from the US and other agricultural exporters led by Brazil for an end-date of 2010. The discussion on food aid proved contentious given EU demands that “other WTO Members” (*i.e.*, the United States) agree on disciplines to convert food aid into cash payments before the EU could agree to an end-date for export subsidies. The Declaration therefore emphasizes the parallel manner of achieving the elimination of all forms of export subsidies. It provides that Members will agree upon effective disciplines on in-kind food aid, monetization and re-exports so that there can be no loop-hole for continuing export subsidization. The Declaration also provides for agreement that export credits, export credit guarantees or insurance programs with repayment periods of 180 days and below should be self-financing, reflecting market consistency, and that the period should be of a sufficiently short duration so as not to effectively circumvent real commercially-oriented discipline. The disciplines on export credits, export credit guarantees or insurance programs exporting state trading enterprises and food aid will be completed by 30 April 2006 as part of the modalities.

The U.S. also came under great pressure to agree on the elimination of export subsidies on cotton, and eventually accepted a commitment that “all developed countries” would do this in 2006.

## **2. Market Access**

### **(a) Tariff Reduction**

**Objective:** The U.S. has demanded by far the highest tariff reduction on agricultural products. Several Members had criticized the U.S. position as leading to cuts at least as deep as those under earlier U.S. proposals based on the harmonizing “Swiss formula” that mandates steeper cuts for those countries with higher tariff levels.

**Outcome:** Members agreed to structure their tariffs into four bands for reduction, while “recognizing that we now need to converge on the relevant thresholds” for developed and developing countries. Annex A of the Declaration takes note of a working hypothesis of four bands for structuring tariff cuts and on adopting a linear-based approach for cuts within those bands. However, divergences persist on the level of tariff reduction. While some Members continue to reject completely the concept of a tariff cap, others have proposed a cap between 75-100%.

### **(b) Sensitive Products**

**Objective:** The U.S. had called for limiting tariff-lines subject to “sensitive product” treatment to 1% of total dutiable tariff lines.

**Outcome:** No significant outcome was achieved in this area given a fundamental divergence among Members over the basic approach to treatment of sensitive products. Annex A

notes that proposals on the number of sensitive products range from as little as 1% to as much as 15% of tariff lines underscoring the need to bridge this difference.

### 3. Domestic Support

#### (a) *Aggregate Measure of Support (AMS)*

**Objective:** The U.S. had proposed reduction within five years of the total bound level of AMS by 37% for countries with bound AMS levels below U.S.\$12 billion; by 60% for countries with bound AMS levels between U.S.\$12 billion and U.S.\$25 billion (i.e. the U.S.), and by 83% for countries with bound AMS levels above U.S.\$25 billion (i.e. the EU and Japan).

**Outcome:** The Declaration provides agreement among Members on three bands for reductions in Final Bound Total AMS. The EU, "the Member with the highest level of permitted support" will be in the top band, facing the highest linear tariff reduction. The US and Japan will be in the second tier, and all other Members would fall into in the bottom band. Countries such as Switzerland, which have high relative amounts of trade-distorting subsidies even though they fall into to the lowest band, will make an additional effort in AMS reduction. There was no agreement on the level of AMS reduction except for a "working hypothesis" for such reduction presented in Annex A, reflecting the different Members' proposals in this regard.

#### (b) *Blue Box*

**Objective:** The July 2004 Framework Agreement had set a ceiling on Blue Box support at 5% of a country's average total value of agriculture production over a period to be established during negotiations. The U.S. had proposed lowering that ceiling to 2.5% of the value of agricultural production.

**Outcome:** Annex A refers to the U.S. proposal to shrink the current 5% ceiling to 2.5% as one possible means towards "further constraining" Blue Box program payments envisaged in the July 2004 Framework. It also refers to a counter-proposal that rejects this approach in favor of additional criteria disciplining the so-called "new" Blue Box only. It notes the existence of yet other proposals that favor a combination of both, including additional disciplines on the "old" Blue Box. Given the divergences among Members' positions in this area, the U.S. can be expected to fight an uphill battle in attempting to secure within the blue box counter-cyclical farm payments to U.S. farmers designed to compensate them in the event of a decline in international commodity prices.

#### (c) *Overall Cuts*

**Objective:** The U.S. had proposed the reduction within five years of the overall<sup>2</sup> permissible levels of trade-distorting support by 31% for countries with overall bound levels below \$10 billion; by 53% for countries with overall bound levels between U.S.\$10 and 60

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<sup>2</sup> The sum of the allowed level of the amber box, blue box, product-specific *de minimis*, and non-product-specific *de minimis* support.

billion (the U.S. and Japan), and by 75% for countries with overall bound levels above U.S.\$60 billion (EU).

**Outcome:** The Declaration provides that Members must make cuts to overall trade-distorting domestic support that are at least equal to, if not greater than, the sum of the reductions in Amber Box, Blue Box, and de minimis (exempted) support. This stipulation may make it harder for countries to simply re-classify subsidies in order to evade reduction commitments. However, apart from this constraint on 'box-shifting,' the Declaration contains no rules for the criteria of the Blue Box. Annex A provides a working hypothesis for the following level of overall cuts:

<b>Bands</b>	<b>Thresholds (US\$ billion)</b>	<b>Cuts</b>
1	0-10	31%-70%
2	10-60	53%-75%
3	> 60	70%-80%

On this basis, the EC would be in the highest band, the U.S. and Japan in the second band, and all other developed countries at least in the lowest band. The range of cuts corresponding to each of the three bands reflects the proposals by different Members and is therefore wider in the Declaration than in the U.S. proposal.

**B. NAMA**

**Objective:** The U.S. has sought commitments from WTO Members for enhanced market access through reductions in tariffs on non-agriculture goods and extensive tariff liberalization, strongly favoring the “Swiss Formula” for tariff reduction. The U.S. has proposed “low single digits” for coefficients for tariff reduction for both developed and developing countries and in particular a coefficient of 10 for developing countries. Under the “sectoral initiative” the U.S. seeks a deal to eliminate or to reduce sharply tariffs on products in certain sectors based on a ‘critical mass’ approach.

**Outcome:** The Declaration provides agreement among Members on adopting a Swiss Formula albeit with an unspecified number of coefficients. Annex B of the Declaration on NAMA provides detail on the specifics of that formula, noting the two proposed variations: a formula with a limited number of negotiated coefficients and a formula where the value of each country's coefficient would be based essentially on the tariff average of bound rates of that Member, resulting in multiple coefficients. Members agreed to adopt a 'non-linear mark-up approach' for unbound tariff lines under which they would add a certain number of percentage points to the tariff rate that they apply on a particular product to establish the base rate for reduction. This dispels the notion held by a number of developing countries that the binding of tariff lines constitutes a concession in and of itself, and that immediate tariff reductions should therefore not be required. Reference to the “sectoral initiative” favored by the U.S. is found in the Declaration with the qualification that participation in such an initiative will be non-mandatory. Developing countries have been resistant to discussion of the sectoral initiative so far demanding that Members first concentrate on establishing the general formula.

### C. Services

**Objective:** The U.S. had sought a high level of ambition in the services negotiations including recognition in GATS schedules of current levels of market access and commitments to reduce market access limitations to services liberalization such as reduction in economic needs tests and Most Favored Nation (MFN) exemptions. The U.S. had been pressing Members to provide high market access in certain priority sectors such as financial services, telecommunications, energy services, express delivery, computer-and-related services and distribution services. While the bilateral “request/offer” process supposedly remains the core of the negotiations, it is generally seen to have failed to produce improved offers of commitments: the U.S. has increasingly concentrated efforts with other WTO members to develop plurilateral approaches that would lead to “critical mass” agreements on key sectors. Commitments made as a result would be applied multilaterally. This is seen as the only way to secure worthwhile results in the little time that remains.

**Outcome:** The final text of the Services Annex emerged with weaker provisions on qualitative modal objectives and on a plurilateral negotiating approach as compared to those in the draft text dated December 7. India, disappointed in the diluted provision on qualitative modal objectives, suggested that the weakened text would provide the U.S. an excuse to evade concessions on Mode 4. Instead of obliging Members to enter into plurilateral market access negotiations if and when presented with a request to do so, the new text stipulates that they "shall consider such requests". The Annex's much-contested Paragraph 7 on the plurilateral request-offer process was revised to specify that Members' obligatory consideration of collective requests would take place in the context of Paragraph 2 of GATS Article XIX, which stipulates that liberalization in services trade should pay respect to countries' developmental levels. Although the introductory 'chapeau' of Paragraph 7 in the annex already specifies that plurilateral negotiations will take place in accordance with GATS principles (and plurilateral negotiations are explicitly provided for both in the Guidelines for this negotiation and in the GATS itself), this change was considered necessary to address the concerns of the G-90 and some Association of Southeast Asian (ASEAN) countries. Members also agreed that plurilateral requests should be submitted by 28 February 2006 or as soon as possible thereafter. In addition, the second round of revised offers is to be submitted by 31 July 2006. Final draft schedules of commitments are to be submitted by 31 October 2006. The new services text falls below U.S. expectations as it had sought stronger language and a higher level of ambition. There was however little option but to accept the text for Members who want to see the services negotiations advance. There is a great danger that it will prove impossible to negotiate and schedule significant new commitments on services by the scheduled end of the Round, particularly if serious negotiations continue to be subordinated to agreement on agricultural modalities. In this case the U.S., along with the EU and Japan, may find it very difficult to mobilize support from the service industries for a Doha Round package which will entail some painful concessions from all of them.

### D. Rules

**Objectives:** U.S. objectives in the area of trade remedy laws, particularly anti-dumping, were essentially defensive. The administration is under heavy Congressional pressure to make no concessions that would “weaken” U.S. trade remedy legislation, and it is predictable

that any such concessions would become a major issue if Congress were asked to approve a Doha Round package containing them. In the relevant Annex D on Rules the U.S. had succeeded in Geneva in securing a reference, among the objectives of the anti-dumping negotiations, to “anti-circumvention proceedings”. This had been controversial in Geneva and was expected to come under attack in Hong Kong.

**Outcome:** In the event, both Annex D and the corresponding paragraph in the Declaration survived unchanged in Hong Kong. Consultations on Rules were not a controversial or particularly difficult element of the Conference. The Annex on Anti-Dumping and Subsidies and Countervailing Measures invites Ministers to "mandate the Chairman to prepare, early enough to assure a timely outcome within the context of the 2006 end date and taking account of progress in other areas of the negotiations, consolidated texts of the AD and SCM Agreements that shall be the basis for the final stage of the negotiations." The U.S. will have been satisfied that the reference to anti-circumvention proceedings remains in the text. The U.S. joined a group of countries including Australia, New Zealand and a number of developing countries in making a public call for effective reduction of subsidies in the fisheries sector, especially to conserve and restore fish stocks.

## **II. Other Negotiating Areas**

### **Development**

In the absence of serious negotiations on modalities for agriculture and NAMA, development issues became a major focus of the Conference, particularly the proposal of the EU that least-developed countries should receive duty-free and quota-free access to developed markets for all of their exports. (The proposal was an easy one for the EU since its own “Everything but Arms” initiative already provides such access. Discussions in Hong Kong centered on the wish of the U.S. and some others to exclude certain “highly competitive” products – textiles from Bangladesh was the standard example – from the concession.

The U.S. had also wanted to exclude some products that are highly protected and/or subsidized in the U.S. such as sugar, dairy, and peanuts. The eventual agreement, set out in Annex F, states that developed countries and developing countries declaring themselves in a position to do so, will implement duty- and quota-free access for all products originating from LDCs by 2008. There is however an important caveat with regard to product coverage: Members that face difficulties in providing full unrestricted access in 2008 will only be required to do so for 97 percent of tariff lines. There is no deadline for extending this treatment to all products, although the text includes a 'best endeavor' provision to "take steps to progressively achieve" full product coverage.

### **OUTLOOK**

In agriculture, the agreement to eliminate all export subsidies by 2013 constituted the most notable achievement. The emphasis in the Declaration on the “parallel manner” in which elimination will be achieved however indicates that the U.S. will be expected to implement changes in its own export competition regime, particularly in regard to food aid. The

Declaration also provides for elimination by 2006 of 'all forms' of developed country export subsidies for cotton. This means not only the elimination of the US Step 2 export subsidy program but also the 'subsidy element' of the export credit guarantees the US extends to cotton traders. Both programs were also ruled WTO-inconsistent by the WTO in April 2005. The decision on the *level* of domestic cotton subsidy cuts however will have to wait until the overall domestic support reductions in agriculture and their implementation schedules are agreed. Domestic subsidies make up 80-90 percent of total US support for cotton (estimated around USD 3.8 billion in 2004), allowing US producers to sell cotton in international markets at prices below the real cost of production.

U.S. objectives in agricultural market access, a priority area, met little success, as divergences in Members' positions on the level of tariff reduction and treatment of sensitive products remained intact. As for industrial market access, the adoption of the Swiss formula was consistent with U.S. objectives although agreement was elusive on the co-efficients that would determine the level of tariff reduction. Although the Ministerial Declaration achieves little in terms of finalizing the level of tariff and domestic subsidy reduction, Annexes A and B on agriculture and NAMA respectively will be important to the extent that they set out convergence in Members' positions and provide the basis for Members to orient themselves for future negotiations. Members have undertaken the ambitious aim of establishing modalities on agriculture and NAMA by 30 April 2006 and to submit comprehensive draft Schedules based on these modalities by 31 July 2006. The timelines fixed for the submission of plurilateral requests, revised offers and final draft schedules in the services negotiations will be even more difficult to meet. All past experience suggests that they will not be met.

The dynamic linkages between the key negotiating areas will continue to play an important role in the negotiations. Notably, the draft text contains a paragraph that explicitly links the level of ambition in key negotiating areas, exhorting negotiators to ensure "a comparably high level of ambition in market access for Agriculture and NAMA".

The major question posed by the outcome in Hong Kong is why it should be any less difficult to agree agriculture and NAMA modalities in April than it was in December. Many negotiators are skeptical on this point and some are suggesting that July is a more likely date. If so, the chances of achieving acceptable results in Services will become even smaller, and this may pose a real threat to the conclusion of a Doha Round agreement.

## **WTO Appellate Body Releases Report on Rice Dispute Between Mexico and the United States**

### ***SUMMARY***

The WTO Appellate Body has largely upheld the findings of a WTO Panel that an anti-dumping investigation by Mexico on imported U.S. rice violated Mexico's obligations under the Anti-Dumping Agreement. The Appellate Body found that aspects of both the dumping and injury determinations by the Mexican investigating authority were inconsistent, as applied, with Mexico's obligations under the Agreement. It also found certain provisions of Mexico's Foreign Trade Act to be WTO-inconsistent "as such."

However, the Appellate Body overturned the findings of the Panel that an investigating authority has the obligation to notify the investigation to all interested parties of which it could "reasonably obtain knowledge", and to calculate individual margins of dumping for these exporters and producers. The Appellate Body disagreed, saying that such obligations applied only for parties actually "known" to the investigating authority, and not for "exporters or foreign producers of whose existence it was unaware."

### ***ANALYSIS***

#### **A. Background**

This dispute concerned a U.S. challenge to definitive anti-dumping duties imposed by Mexico on long-grain white rice imported from the United States. The United States also challenged a number of provisions of Mexico's Foreign Trade Act "as such" (i.e., the law itself, independently of its application). The main findings of the Appellate Body are discussed below.

#### **B. Mexico's Injury Determination**

***Selecting the investigation period: "more recent data is likely to provide better indications about current injury"***

Mexico used a period of investigation into the injury that ended more than fifteen months before the initiation of the anti-dumping investigation itself. The Panel had found that this was inconsistent with Mexico's obligation under Article 3.1 of the Agreement to make a determination of injury based on positive evidence and an objective examination of the volume and price effects of the alleged dumped imports or of the impact of these imports "at the time [the] measures were imposed."

The Appellate Body began by noting that WTO Members are permitted to take "corrective measures in order to counter the injurious situation created by dumping", and that "[u]nder the logic of this corrective scheme, the imposition of anti-dumping duties is justified to the extent that they respond to the injury caused by dumping." It added that "[b]ecause the conditions to impose an anti-dumping duty are to be assessed with respect to the current situation,

the determination of whether injury exists should be based on data that provide indications of the situation prevailing when the investigation takes place.”

The Appellate Body clarified that this did not imply that investigating authorities were not permitted to establish a period of investigation that covered a past period. It recognized that in order to determine whether injury caused by dumping existed when the investigation took place, “historical data” may be used. However, the Appellate Body stressed that “the more recent data is likely to provide better indications about current injury.”

The Appellate Body agreed with Mexico that using a remote investigation period was not *per se* a violation of Article 3.1. However, it said that the Panel determined that there was a violation of Article 3.1 based on other circumstances as well, including the use of the period of investigation proposed by the petitioner (see below). The Appellate Body therefore said it had “no reason to disturb the Panel’s assessment that a *prima facie* case of violation of Article 3.1 was made out.”

***“Selective use of data” does not provide “accurate and unbiased picture”***

Mexico limited its injury analysis to six months of each of the three years examined during the period of investigation. The Panel said that the investigating authority in this case “was aware of, and accepted, the fact that the period chosen reflected the highest import penetration, thus ignoring data from a period in which it can be expected that the domestic industry was faring better.” The Appellate Body upheld the Panel’s finding that Mexico had failed to make a determination of injury that involved an “objective examination”, as required by Article 3.1.

The Appellate Body pointed to two factors - what it called Mexico’s “selective use of the information gathered for the purpose of the injury analysis” and the acceptance by Mexico of the period of investigation proposed by the petitioner, “knowing that the petitioner proposed that period because it allegedly represented the period of highest import penetration.” The Appellate Body therefore agreed with the Panel that the data used by Mexico did not provide an “accurate and unbiased picture” of the state of the domestic industry, and therefore did not result in an “objective examination” as required by Article 3.1 of the Agreement.

***Assumptions must be “derived as reasonable inferences from a credible basis of facts”***

The Appellate Body also upheld the Panel’s injury analysis with respect to the volume and price effects of dumped imports. The Appellate Body stated that an investigating authority “enjoys a certain discretion in adopting a methodology to guide its injury analysis”, and “[w]ithin the bounds of this discretion, it may be expected that an investigating authority might have to rely on reasonable assumptions or draw inferences.” However, it added that in doing so, the investigating authority must ensure that its determinations are based on positive evidence. Accordingly, it said that when “a determination rests upon assumptions, these assumptions should be derived as reasonable inferences from a credible basis of facts, and should be sufficiently explained so that their objectivity and credibility can be verified.”



In the present case, the Appellate Body said that Mexico had not explained why its assumptions were “appropriate and credible” in its analysis of the volume and price effects of the dumped imports. The Appellate Body therefore agreed with the Panel that the assumptions on which Mexico had relied were “not properly substantiated.”

### **C. Mexico's Dumping Determination**

#### ***“Immediate termination” of investigation required where the margin of dumping is de minimis***

Mexico had not excluded from the application of the order two U.S. companies that had been found not to have been dumping during the period of investigation. The Panel found that this breached the obligation in the Agreement that “[t]here shall be immediate termination [of an investigation] in cases where the authorities determine that the margin of dumping is *de minimis*....” The Appellate Body agreed with the Panel that this required the immediate termination of the investigation in respect of exporters for which an individual (rather than country-wide) margin of dumping of zero or *de minimis* has been determined. The Appellate Body concluded that “[g]iven that the issuance of the order establishing anti-dumping duties necessarily occurs after the final determination is made, the only way to terminate *immediately* an investigation, in respect of producers or exporters for which a *de minimis* margin of dumping is determined, is to exclude them from the scope of the order [original emphasis].” Mexico had not done so, and was therefore found to be in breach of the Agreement.

#### ***Scope of notification obligation: Appellate Body reverses the Panel***

The Appellate Body overturned the findings of the Panel that Mexico had breached certain procedural obligations under the Agreement when it failed to notify all interested parties known to have an interest in the investigation of the initiation of the investigation, and of the information required of them. The Panel interpreted the term “interested parties known to the investigating authorities” to cover not only exporters actually known to the investigating authority, but also the exporters of which it could “reasonably obtain knowledge.” However, the Appellate Body considered that this “extensive interpretation” by the Panel was “not correct.” It said that the investigating authority was under an obligation to notify the exporters “known” to it at the time it was satisfied that there was sufficient evidence to justify the initiation of the investigation. It stressed that the notification requirement did not apply to importers “other than those of which the investigating authority had actual knowledge at that time.”

Similarly, the Appellate Body reversed the finding of the Panel that Mexico had acted inconsistently with the obligation to determine an individual margin of dumping for “each known exporter or producer concerned” of the product under investigation. The Panel had interpreted this to include exporters or foreign producers with which “an unbiased and objective investigating authority properly establishing the facts would reasonably be expected to have become conversant.” The Appellate Body disagreed, saying that the investigating authority was “not required to determine an individual margin of dumping for exporters or foreign producers of whose existence it was unaware.”

#### **D. U.S. "As Such" Challenges to Mexico's Foreign Trade Act**

The United States challenged a number of Articles of Mexico's Foreign Trade Act as inconsistent "as such" with Mexico's obligations under the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures (SCM Agreement). The U.S. claims included those discussed below.

##### ***Law prevented "reasoned and selective use" of "facts available"***

A provision of the Foreign Trade Act requires Mexico's investigating authority to determine the countervailing duty in a subsidy investigation "on the basis of the highest margin of price discrimination or subsidization obtained from the facts available."

The Appellate Body said that recourse to facts available did not permit an investigating authority to "use any information in whatever way it chooses" and that "such recourse is not a licence to rely on only part of the evidence provided." An investigating authority using "facts available" in a countervailing duty investigation had to take into account "all the substantiated facts provided by an interested party, even if those facts may not constitute the complete information requested of that party." It added that "facts available" are "generally limited to those that may reasonably replace the information that an interested party failed to provide."

Applying these principles to the challenged measure, the Appellate Body said that the Act appeared to require that Mexico "indiscriminately" use the highest margin possible. In the view of the Appellate Body, the law prevented Mexico from "engaging in the reasoned and selective use of the facts available", and so was inconsistent with the Anti-Dumping and SCM Agreements.

##### ***No obligation to demonstrate "representative" volume***

The Foreign Trade Act requires parties seeking a duty assessment review or a changed circumstances review to demonstrate that the volume of exports to Mexico during the review period was "representative." The Appellate Body stated that the provisions of the Anti-Dumping and SCM Agreements on duty assessment reviews and changed circumstances reviews were "exhaustive", and that the Mexican law imposed "additional conditions on a respondent's right to a review", inconsistently with the Agreements.

##### ***Reviews of "definitive" duties cannot be refused pending judicial proceedings***

The Appellate Body also upheld the finding of the Panel that a provision of the Foreign Trade Act that precluded the authorities from conducting a review of anti-dumping or countervailing duties while judicial review proceedings were underway (either before the Mexican courts or a NAFTA Panel) was also WTO-inconsistent. Mexico argued that as long as such judicial review proceedings were ongoing, the duties could not be considered as "definitive", and thus reviews were not required.

However, the Appellate Body ruled that a duty becomes “definitive” - thereby meeting one of the conditions for review - at the time of the investigating authority’s final affirmative determination. The Appellate Body found that the Mexican law imposed a condition on the duty assessment and changed circumstances reviews (i.e., the completion of judicial proceedings) that was not provided for in the Anti-Dumping Agreement or the SCM Agreement. It therefore upheld the Panel’s findings that this part of the Foreign Trade Act was also WTO-inconsistent.

The decision of the Appellate Body in *Mexico - Definitive Anti-Dumping Measures on Beef and Rice* (DS295) was released on November 29, 2005.

### **OUTLOOK**

This is one of the relatively few Appellate Body decisions to provide concrete meaning to the obligation imposed on investigating authorities to ensure that injury and dumping determinations are based on "positive evidence" and an "objective examination." These requirements are specified in the Agreement, and have been defined in earlier cases, although on a more abstract basis. In the current case, the Appellate Body gave more specific guidance on how investigating authorities can fulfill these core obligations.

For example, the Appellate Body found that that the period of investigation into the injury should be reasonably proximate in time to the anti-dumping investigation, as “more recent data is likely to provide better indications about current injury.” It also stressed that the “selective use of data” (in this case, the six months of each year when imports were at their highest levels) did not provide an “objective examination.” It similarly indicated that when investigating authorities relied on assumptions, they had to be “derived as reasonable inferences from a credible basis of facts” and sufficiently explained so that their “objectivity and credibility can be verified.” This decision thus provides certain guidelines to investigating authorities as to the types of practices that will meet the standards of the Agreement.

The Appellate Body decision also provides additional clarity on when authorities may resort to the use of so-called "facts available" during investigations. The Agreement allows investigating authorities to rely on other sources of information, including secondary sources, when faced with recalcitrant or uncooperative companies that fail to provide the requested information. However, the Appellate Body emphasized that recourse to facts available did not permit an investigating authority to “use any information in whatever way it chooses” and that “such recourse is not a licence to rely on only part of the evidence provided.” It stated that an investigating authority using “facts available” is “generally limited to those [facts] that may reasonably replace the information that an interested party failed to provide.” Thus, the Appellate Body has made clear that recourse to “facts available” is subject to conditions to ensure that the determination resulting from such information will indeed meet the requirements of “positive evidence” and an “objective examination.”

The recourse to "facts available" in an anti-dumping investigation can be a highly contentious exercise. The Appellate Body decision may well trigger additional litigation, as complainants in future cases will use this precedent to challenge what the Appellate Body referred to as “indiscriminate” use of facts available by investigating authorities.

## U.S. Congressional Members Weigh in on WTO Negotiations

### SUMMARY

While United States Trade Representative (USTR) Rob Portman and various trade officials tackled World Trade Organization (WTO) negotiations in Hong Kong for the December 13-18 Ministerial Conference, U.S. Members of Congress were stuck in Washington, D.C. attending to unfinished appropriations legislation. Despite being unable to attend the Hong Kong Ministerial as originally planned, many interested members of Congress monitored the talks and promoted their positions on the various negotiating sectors. We review here the assessments of several Members of Congress on the WTO negotiations including the talks on services, agriculture, and textiles and apparel.

### ANALYSIS

Although expectations for the December 13-18 WTO Ministerial Conference diminished with the realization that WTO Members would not achieve full modalities, many legislators in the United States are already voicing concern over the general direction of WTO negotiations and the United States' positions during the talks.

- **Agriculture.** A delegation of 39 U.S. Congressmen, led by **Reps. Jim Kolbe (R-AZ)** and **Adam Smith (D-WA)**, sent a December 8, 2005 letter to President Bush expressing their support for ambitious trade liberalization as part of the WTO's Doha Round. The letter urged "continued bold American leadership to break the deadlock in the Doha WTO Round" and noted the Congressmen's concerns "that the current difficulty in the Doha Round and the increasing partisanship surrounding Congressional trade votes threatens to undermine U.S. support for open trade." The letter recognized that "the prolonged stalemate in the WTO over domestic agricultural subsidies and market access has blocked progress on industrial tariffs and services." The Representatives also stated that "the United States stands ready to eliminate its trade-distorting agricultural supports and trade barriers if only [its] trading partners will do the same." The letter reaffirms the Representatives' "call for bold WTO leadership" and their agreement "that any WTO Agreement must be contingent on the broad-based willingness of our trading partners to open their markets to American farm products." According to the letter, unlocking agriculture negotiations is the key to moving trade talks forward.
- **Services.** On December 5, 2005, **Sen. Dianne Feinstein (D-CA)** and six other Senators sent a letter to USTR Portman urging the United States to reject offers from WTO Members on making Mode 4 commitments (facilitation of temporary cross-border movement of professional personnel) under the services negotiations. According to the letter, making Mode 4 commitments "would affect the immigration policies of the United States"

and that “inclusion of immigration matters in free trade agreements degrades Congress’ ability to exercise its plenary power.” The letter further noted that the United States “should not give the bloc of countries making Mode 4 demands any false hopes that the Administration would be amenable at any time to agreeing to include, bind or modify U.S. immigration policy in trade agreements.” The letter concluded that the Senators “are seeking to avoid a situation in which [they] would be forced to oppose a trade agreement solely because its terms invaded subject matter over which [they] retain exclusive domestic policymaking authority.” This is not the first time that members of Congress have expressed concern over Mode 4 negotiations. Acting USTR for Services and Investment Christine Bliss testified on November 15, 2005 before the House Subcommittee on Domestic and International Monetary Policy that USTR was “mindful of congressional sensitivities,” and that the United States would not be proposing new initiatives in Mode 4. India is perhaps the most vocal WTO proponent of Doha Mode 4 commitments.

- **U.S. Trade Remedies Laws.** On November 22, 2005, **Reps. Charles Rangel (D-NY)** and **Benjamin Cardin (D-MD)** sent a letter to USTR Portman on the draft antidumping text issued by the Chairman of the WTO Negotiating Group on Rules. The letter condemned the draft text because it “opens the door to broad re-negotiation of the WTO Antidumping Agreement and contains numerous other flaws.” The letter also stated that “antidumping remedy ensures that American farmers, workers and businesses have a remedy against a key unfair trade practice for many foreign businesses” and noted that the draft text displays the lack of an effective U.S. negotiating strategy on antidumping. Both Representatives urged USTR not to accept the text. Their letter is not the first, nor will it be the last, expression of congressional opposition to the alteration of U.S. trade remedy laws. For example, **Sens. John D. Rockefeller (D-WV)** and **Larry Craig (R-ID)** sent a December 1, 2005 letter to President Bush calling on the Administration to “instruct U.S. negotiators to engage in a fundamental reevaluation of where [the United States is] in WTO talks, and to redirect their efforts to ensure that that U.S. trade laws are fully preserved.” The letter urged President Bush to defend existing U.S. trade laws and “protect American workers from unfair trade practices such as dumping and illegal subsidies.” The Senators’ letter referenced a Senate resolution (S. Con. Resolution 55, “Expressing the sense of the Congress regarding the conditions for the United States to become a signatory to any multilateral agreement on trade resulting from the World Trade Organization’s Doha Development Agenda Round”) and stated that the resolution “makes clear that the current path of negotiations on fair trade rules is badly off track and must be radically altered if an acceptable agreement is to be reached.” The Senate passed the resolution on November 17<sup>th</sup>. USTR will likely take the Senate resolution and the congressional letters opposing the rules negotiations under advisement but likely will not substantively change its positions.

- **Textiles and Apparel.** On December 8, 2005, **Rep. Robin Hayes (R-NC)** and 23 other Representatives sent a letter to President Bush in support of special textile sectoral negotiations as part of the broader Hong Kong talks on Non-Agricultural Market Access (NAMA). The letter stated that “China and other countries are pushing for drastic cuts in U.S. textile tariffs as part of a formula approach under a broad industrial products classification” and noted that such a formula would “almost certainly” push U.S. tariffs below five percent and create a flood of Chinese textile imports. The letter also noted that the tariff cutting formula would lead to Chinese textile imports’ displacement of those from countries with which the United States has bilateral agreements. Hayes and the other Congressmen asked that market access negotiations on textiles and apparel be removed from the general industrial products classification in the NAMA negotiations “and be placed in a Special Textile Sectoral within the NAMA umbrella.”
- **EU Participation.** On December 15, 2005, House Committee on Agriculture Chairman **Rep. Bob Goodlatte (R-VA)** stated that he was “disappointed to hear of the European Union’s continued obstinacy in the WTO Ministerial talks in Hong Kong [and] their refusal to discuss market access or even consider movement on their proposal is hindering any progress that would move these negotiations forward.” Goodlatte blamed the EU for stalling agriculture talks and opined that “fair trade involves all parties participating equally and at this point we will need to see a more aggressive effort from our trading partners.” On December 16, Senate Finance Committee Chairman **Sen. Charles Grassley (R-IA)** stated that “the European Union continues to block movement [by] refusing to provide better market access for agricultural products, including those of developing countries.” Grassley also noted that West African nations’ concerns on cotton and removal of domestic subsidies were “understandable” but noted if “the talks collapse, those west African countries risk seeing no improvement in the cotton situation.”
- **Cotton.** Following the conclusion of the WTO Ministerial, Senate Agriculture Committee Chairman **Sen. Saxby Chambliss (R-GA)** stated that the draft declaration “is disappointing” and “unfairly and disproportionately targets farmers in Georgia and across the United States.” Chambliss noted that “the draft calls for the elimination of export subsidies in 2006 and reductions in trade-distorting domestic support more quickly than that generally applicable for agriculture,” and that these measures would hurt U.S. farmers more than farmers in other countries. Chambliss also blasted the EU for not tabling more ambitious proposals on agriculture and stated that “there is no reason why French farmers should be able to hide behind tired rhetoric and false sympathy for their former colonies instead of matching the United States and offering increased market access for agriculture products.”

- **Post-Hong Kong Progress.** On December 18, 2005, **Senator Grassley** issued a statement on the final draft ministerial declaration in which he opined that although “it’s good that the Ministerial will lead to more negotiations,” WTO Members have “a lot more work ahead.” He also stated that he would “be watching the negotiations closely in the next several months” and added that “Congress would have to approve legislation implementing any agreement . . . [and] without substantial improvement over the next few months, this framework will go over like a lead balloon.” On completing the Doha Round, Grassley stated that “the best hope for a successful Doha Round lies in small-group [plurilateral] negotiations over the next few months.” **Sen. Max Baucus (D-MT)**, Ranking Member of the Senate Finance Committee stated that he was disappointed with the Hong Kong Ministerial: “Negotiations are supposed to be give-and-take. But here, the United States is doing all of the giving while our trading partners, both developed and developing, are doing all of the taking. The United States – already the world’s most open economy – has offered serious concessions in agriculture. But rather than make any real counteroffers, our trading partners only appear interested in pocketing what we offer and then demanding more.” He called on U.S. trading partners to make “equally significant concessions and warned that should trading partners remain firm in their “less than ambitious proposals,” Congress might find it difficult to continue supporting the Doha Round.

### ***OUTLOOK***

Although Members of Congress cancelled their trip to Hong Kong to conclude domestic political matters, their actions before, during and after the Ministerial Conference indicate that they are closely monitoring the Doha Round negotiations. Many of these Congressmen have staked their positions on political, rather than ideological grounds. For example, Rep. Hayes represents a North Carolina district that contains large concentrations of textile producers and workers, and Sen. Rockefeller represents a steel industry that has benefited greatly from current U.S. trade remedy laws. On the other hand, the Hong Kong-related actions of those in Congress not playing politics demonstrate that the ideological fault lines on Capitol Hill are being drawn long before the multilateral trade agreement is complete. As the actual substance of the agreement emerges, the activity of both the politically-motivated and the idealistic (be they free trade or anti-trade) should increase dramatically, as Members gear up for what is sure to be a heated congressional debate over the final agreement. For now, however, the Members’ Doha-related letters and non-binding resolutions are relatively harmless, as U.S. trade negotiators will not substantively alter their negotiating stances unless given a binding legislative mandate to do so.

## December 17-18 WTO Ministerial Update: Are the Few Advances Enough to Save the Round?

### SUMMARY

Although days 5 and 6 of the World Trade Organization's (WTO) Hong Kong Ministerial Conference produced the week's first and only substantive breakthroughs, many trade ministers felt that the week's few advances were insufficient. The most notable progress occurred in agriculture, as WTO Members finally agreed to an end date for the elimination of export subsidies. Trade ministers also made gains in market access to least developed countries (LDCs) and cotton subsidies. Overall, however, many trade negotiators and outside observers opined that Hong Kong failed to revive the stalled multilateral trade negotiations.

### ANALYSIS

#### I. General Developments

- The WTO ministerial conference formally closed on December 18 after delegations accepted a final ministerial declaration laying out the future work plan for the Doha round. Venezuela and Cuba filed reservations on the text that did not prevent the adoption because the declaration is a procedural agreement on how to conduct the negotiations. The ministers did not set a date for the next ministerial.
- The ministerial set **April 30, 2006** as the deadline for the establishment of full modalities (i.e. a complete negotiating framework) for negotiating agriculture and industrial market access in the Doha round. In his closing remarks to the Ministerial, WTO Director General Pascal Lamy expressed doubts that negotiators could meet the new deadline but added that the "modest" progress of the week had put negotiators into the position to do so. He also pointed out that "the more progress negotiators make, the more they focus what is on the table and what may be lost if negotiations fail." Lamy opined that it is possible to conclude the Doha Round although, according to Lamy, "it will require hard work on the part of negotiators and instructions from their bosses to strike a deal." Lamy stated that the Ministerial put the Doha Round "back on track after a period of hibernation" and has given negotiators a new political energy to reach "cruising speed" in 2006. United States Trade Representative (USTR) Rob Portman stated that he believed the April 30 deadline could be reached if members were willing to exercise the necessary political will but warned that missing this April 30 deadline would put at risk the goal of completing the round by the end of 2006. He noted that the United States is "really focused on getting this done by the end of the year, the end of 2006, which means letting it slip beyond April would be a problem."



## II. Agriculture

- **End date for elimination of export subsidies.** On December 18, WTO Members agreed to eliminate export subsidies of agricultural products by 2013. Although the agreement calls for the elimination of a “substantial” portion of the subsidies well before 2013 deadline, it does not specify amounts or a timetable. The ministerial text also sets a deadline of April 30 for achieving full modalities, which would include specific figures for reducing agricultural tariffs and subsidies. The United States had originally proposed 2010 as the final date for the elimination of export subsidies although Portman stated that the agreed-upon 2013 date “would still help greatly.”
- **Safeguards for developing countries.** On December 18, WTO Members agreed that developing countries will have recourse to a special safeguard mechanism based on import quantity and price triggers. Precise arrangements will be further defined at a later date. The text highlights the importance of the special products and special safeguard provisions by stating they are an integral part of the modalities and outcome of agriculture negotiations.
- **Sensitive products.** On the issue of sensitive products that countries can exempt from a formula tariff cut, the final language in the text is “watered down” from the December 17 draft and only recognizes “the need to agree on treatment of sensitive products, taking into account all the elements involved.” The December 17 text called for members to expand quotas for sensitive products proportionately to the degree countries deviate in their tariff cuts from the established formula (*i.e.*, the greater a country’s deviation from the tariff reduction formula, the greater the increase in its tariff rate quota). The United States and the EU had proposed sensitive designation for 1 and 8 percent of tariff lines, respectively. According to the United States, anything more than 1 percent could undermine a future farm trade agreement.
- **Tariff-cutting formula.** The final declaration did not make progress on the tariff reduction formula. The EU stated earlier on that it would not discuss specific numbers at the Ministerial. The text calls for the adoption of four bands for structuring tariff cuts – with higher tariffs subject to higher cuts – but does not define these bands. According to the text, this “decision will be taken later.”
- **Domestic subsidies.** The final text calls for a greater reduction in overall trade-distorting domestic subsidies than in amber box support. The overall subsidy cuts would equal the sum of the amounts spent on three categories of subsidies, (the blue, amber and green boxes). The text also establishes

three bands for cutting domestic subsidies and implicitly places the EU in the first tier by maintaining that the tier should include members with the highest level of domestic support. The United States and Japan would be in the second tier and thus subject to the second-highest cuts. All other WTO Members would be subject to the lowest cuts in the bottom tier.

### III. Non-Agricultural Market Access (NAMA)

- **“Swiss Formula” not adopted.** On December 18, WTO Members agreed to a final text on NAMA. The text recognizes the role of sectoral initiatives in the NAMA negotiations, reaffirms flexibilities for developing countries, and accommodates countries with low applied tariffs. It does not, however, endorse a simple “Swiss Formula” with two coefficients – one for developed countries, one for developing countries – for reducing industrial tariffs. The United States and most other WTO Members support the adoption of the “Swiss Formula.” Argentina, Brazil and India, however, are sticking to their alternative formula (the “ABI Formula”) that requires greater reductions on tariffs that are higher than a country’s overall average bound rate and lower reductions on tariffs below the average bound rate.
- **Special and differential treatment.** The December 18 text refers to flexibilities demanded by a group of 11 developing countries led by Brazil and India, but simply reaffirms members’ commitments to special and differential treatment and less than full reciprocity, including the flexibilities of paragraph 8 of the July 2004 framework, as an integral part of the modalities in NAMA. The flexibilities in paragraph 8 would allow developing countries to exempt a certain percentage of their tariff lines from formula reduction or not to bind a percentage of their tariff lines. Deputy USTR Peter Allgeier indicated on December 14 that the United States opposed the proposal. According to Allgeier, it is impossible to agree on this issue separately because a Member’s flexibility to exempt products from a formula cut is related to how much it reduces its industrial tariffs within the formula.
- **Tariff reductions.** The December 18 text states that Members adopt “a non-linear mark-up approach to establish base rates for commencing tariff reductions” and instructs the negotiating group to finalize the details of how to apply this mark-up as soon as possible.

### IV. Services

- **“Minimalist” text.** On December 17, WTO Members agreed on final text on services negotiations. The new text offers three amendments to the language in the services annex that weaken language regarding the need for request/offer negotiations to continue at the bilateral and plurilateral levels.

The new language states that WTO members “shall consider such requests” and drops the reference to conducting such negotiations on a plurilateral basis. Sources opined that the final text was “minimalist” in nature because it dropped the plurilateral reference. The United States and the EU had been making a concerted push for inclusion of the plurilateral reference in the text. USTR Portman opined that plurilateral negotiations would help WTO Members finalize the Doha Round by the end of 2006.

- **South Africa, developing nations support newly revised text.** On December 17, South Africa expressed its support of the new services text that weakens language regarding the need for request/offer negotiations to continue at the bilateral and plurilateral level. South African officials signaled that the new revised services text seems to address the demands of the group of developing countries that had opposed the draft text that began the Hong Kong Ministerial. The countries argued that the original text obligated them to seek a higher level of commitments in the services negotiations than they could accept. South African negotiator Xavier Carim stated that the new text addressed 60-80 percent of the objections raised by the Group of 90 (G90) and the Association of Southeast Asian Nations (ASEAN) in their own proposal. Carim also stated that Members were satisfied with the fact that the annex drops a reference to work on a possible framework for government procurement, and that the new annex no longer suggests that members enter into plurilateral negotiations but only directs them to consider requests to do so.

## V. LDC Initiatives

- **Duty-free and quota-free.** The United States endorsed an initiative to provide duty-free, quota-free market access for least developed countries (LDCs) after it successfully pushed for three changes in the December 18 final text aimed at making it more acceptable domestically:
  - **Limited commitment.** The first change limited developed countries’ commitment to 97 percent of LDC tariff lines by 2008, or no later than when a final Doha agreement is implemented. The change would allow for the exemption of sensitive products, such as textiles, from the duty- and quota-free commitment. The text also called for developed countries to move progressively towards comprehensive coverage, but does not stipulate a deadline for doing so.
  - **Political commitment versus obligation.** The United States also succeeded in making the initiative more of a political commitment than a binding WTO obligation. The U.S. position downgraded the LDC initiative from a potentially binding “decision” of the Ministerial

Conference to a political statement by ministers in the Ministerial declaration.

- **U.S. preferential rules of origin.** The United States also pushed for a third change in the text that preserved the right to base the LDC access on U.S. preferential rules of origin that generally require the use of some U.S. yarn and fabrics for textiles. The United States had objected to language in an earlier draft that obligated members to ensure “transparent and simple” rules of origin meant to improve the use of the preference program.

## VI. Trade Facilitation

- **General agreement.** On trade facilitation, WTO Members “recall and reaffirm the mandate and modalities for negotiations in trade facilitation.” Advances have been made on the objective of arriving at provisions for effective cooperation between customs and trade authorities and Members have also made contributions on “the identification of trade facilitation needs and priorities, development aspects, cost implications and inter-agency cooperation.” The text also notes that “work needs to continue and broaden on the process of identifying individual Member's trade facilitation needs and priorities, and the cost implications of possible measures.” The negotiating group recommends “relevant international organizations be invited to continue to assist Members in this process, recognizing the important contributions being made by them already, and be encouraged to continue and intensify their work more generally in support of the negotiations.” The final text did not include a date for final modalities in trade facilitation.

## VII. Contentious Issues

- **Cotton**

- **U.S. cotton domestic subsidies.** On December 18, WTO Members were able to slightly modify language in the ministerial text regarding domestic cotton subsidies. The new language in the December 18 draft declaration states that Members agree that their “objective” is to reduce trade-distorting domestic subsidies for cotton production more ambitiously than for other commodities and implement these cuts over a shorter period of time than generally applicable. This language is in contrast to the December 17 draft text that stated that trade-distorting cotton subsidies “will be more quickly and ambitiously reduced than the general formula to be agreed” and that “modalities for domestic support will be implemented over a shorter period of time than that

generally applicable for agriculture.” The United States had opposed the December 17 text but lauded the revised text.

## **December 16 WTO Ministerial Update: Main Issues Stalled As Members Write Texts**

### ***SUMMARY***

Day 4 of the World Trade Organization's (WTO) Hong Kong Ministerial Conference has produced little substantive gains in the key negotiating areas. WTO Members has thus far failed to advance agriculture negotiations, and these problems have adversely impacted the already contentious services and industrial market access (NAMA) talks. WTO Director General Pascal Lamy has set a 6 a.m. Dec. 17 deadline for Members to submit proposals for amending a Hong Kong draft ministerial text that is supposed to further define the Doha Round's objectives. Lamy hopes to circulate the revised ministerial text midday December 17. At this stage, however, it appears unlikely that the text will reflect any major steps forward.

### ***ANALYSIS***

#### **I. General Developments**

- WTO members ended the fourth day of the Ministerial Conference working on the texts that will be inputs for a revised draft ministerial text to be circulated on December 17. Chairperson John Tsang, Hong Kong's Commerce, Industry and Technology Secretary, announced the schedule that was followed by more consultations that lasted into the evening. The core consultations are being held jointly by Minister Tsang and WTO Director-General Pascal Lamy and have focused on agriculture, including cotton, and non-agricultural market access (NAMA), specific development issues and the question of duty-free, quota-free market access for least-developed countries. Close to forty delegations participated in the Chairman's Consultative Group, representing all the alliances in the negotiations. Also, the five ministers who have been asked to "facilitate" consultations on specific topics have met with delegations in various formats.
- The Ministerial Conference approved on December 15 Tonga's accession to the WTO. Tonga will become the WTO's 150th Member after it ratifies its accession Protocol.
- Director-General Pascal Lamy has set December 17 at 6 a.m. as a deadline for Members to offer proposals for amending the draft Hong Kong Ministerial Declaration.
- United States Trade Representative (USTR) Rob Portman proposed on December 15 to hold a Ministerial meeting on March 31, 2006 in Geneva to finish the work that was originally to be completed at Hong Kong. The meeting should be similar to the July 2004 meeting that resulted in the "July Package."

## II. Agriculture

- **Agriculture Green Room.** Director General Pascal Lamy requested comments from Green Room participants on 13 agricultural issues in which further progress might be possible:
  - **Export competition:** (i) the end date for phasing out export subsidies; (ii) the rate at which these subsidies should be phased out (*i.e.* what percentage per year); (iii – v) disciplines on food aid, export credit and state trading enterprises (STEs).
  - **Market access:** (i) the number of bands for tariff reduction; (ii) the treatment of sensitive products; (iii) special product designation for developing countries; (iv) the special safeguard mechanism for developing countries; and (v) tariff preference erosion.
  - **Domestic support:** (i) the number of bands for subsidy reductions; (ii) the thresholds under each band; and (iii) the reduction in total trade-distorting support.
- **Pressure on EU for export subsidies end-date.** As pressure mounted on the EU to set an end-date for the elimination of export subsidies at Hong Kong, France and Ireland requested an extraordinary EU Council of Ministers meeting to remind the Commission to stick to its negotiating mandate. Both countries want to ensure that the Commission will not agree to an end-date unless other Members make concessions on the other export competition distortions: the United States on food aid and export credits; and Australia, New Zealand and Canada on STEs.

## III. Non-Agricultural Market Access (NAMA)

- **Risk of backsliding.** NAMA facilitator Humayun Khan stated that NAMA negotiations “had borne little fruit” and progressed very little on December 16. Khan also stated that the risk of backsliding on some NAMA issues was growing and that divisions still existed between NAMA negotiators. According to Khan, “delegations are stuck in the positions they took heading into Hong Kong and have not demonstrated the necessary flexibility to turn the Hong Kong meeting into a success story.”
- **“Swiss Formula” support.** Khan stated that broad support exists for the “Swiss Formula” for reducing industrial tariffs. The support is not unanimous, however, with Argentina, Brazil and India sticking to their alternative formula (“ABI Formula”) that requires greater reductions on tariffs that are higher than a country’s overall average bound rate and lower reductions on tariffs below the average bound rate.

- **Separate treatment for LDCs.** A group of eleven developing countries have insisted that the question of special treatment for developing countries be considered separate from the negotiations on the NAMA formula. These countries also urged WTO Members to maintain “strict parallelism” between commitments made by developing countries on NAMA and agriculture.

#### IV. Services

- **Emergency meeting on informal proposals.** On December 16, WTO Members participated in a closed discussion on the services annex to the draft ministerial declaration. Sources noted that a majority of Members, including the United States, the EU and India, voiced their support for preserving the language in the text. These countries stated that altering the text would set back services negotiations and could lead to “additional demands for change.” Negotiators also discussed the various proposals for changing the text, including the G-90 proposal that would eliminate specific objectives for future services negotiations in terms of modes of supply and sectoral commitments. South Africa, Venezuela, the Philippines, Cuba and Indonesia back the G-90 proposal. Another proposal made by South Africa, Kenya, Mauritius, Antigua and Barbuda, St. Lucia and Jamaica would change the provisions of the services annex with respect to modal and sectoral objectives and the plurilateral approach. Services facilitator Hyun Chang Kim will report his findings and developments of the meeting to WTO Director General Pascal Lamy on December 17 before Lamy presents a new draft ministerial declaration.
- **EU and United States push for plurilateral approach.** In light of the G-90 proposal requesting that the plurilateral approach be removed from the services annex, the United States and the EU on December 16 made a concerted push for its inclusion. EU Trade Commissioner Peter Mandelson stated that he believed plurilateral negotiations would serve as the “main engine for advancing the services talks.” USTR Rob Portman echoed Mandelson’s view and stated that plurilateral negotiations would help WTO Members finalize the Doha Round by the end of 2006.

#### V. Development

- **Draft text issued.** Minister Clement Rohee from Guyana, facilitator on development issues, issued on December 15 a draft text that could serve as a basis for a decision on duty-free and quota-free treatment for LDCs exports. The text provides that all LDCs would benefit from this initiative “on a lasting” – though not formally bound – basis. However, the text would allow Members to exempt a certain percentage of self-designated tariff lines from the obligation to provide full market access. The size of this



reservation would decrease over time. The reservation is intended to placate U.S., Japanese and Canadian concerns. One issue that has been left open is the implementation date. The United States has proposed that this agreement be part of the “single undertaking” (*i.e.*, enter into force at the end of the Round), but the LDC group and the EU insist that the agreement should be an early harvest.

## **VI. Contentious Issues**

- **Cotton**

- **United States tariff-elimination for African cotton.** USTR announced a proposal that would reduce to zero U.S. tariffs on West African cotton imports that enter the U.S market above the tariff rate quota. USTR Portman noted, however, that this offer is conditioned upon the agreement of other developed and developing countries, including China, India and Pakistan, to likewise reduce their tariffs. The proposal would enter into force only when an overall Doha agreement has been reached (*i.e.* it is not to be an early harvest). The EU responded to the U.S. market access proposal by calling it “a step in the right direction” but added that the real problem is domestic and export subsidies that promote the dumping of cotton on the world market, thereby suppressing world prices.

- **Bananas and Sugar**

- **ACP voices serious concerns over erosion of preferences in sugar and bananas.** According to a December 16 African Caribbean Pacific (ACP) press release, ACP member countries believe they will lose over 250 million Euros due to the EU’s new sugar policy. ACP banana producing countries also claimed that they are facing the persistent erosion of their preferences, already resulting in the destruction of their industries and is threatening the livelihoods of hundreds of thousands of people. “We are starting to strongly question the value of the WTO to small, vulnerable, developing countries. It appears that these talks -will bring us nothing at all and even drive us further into poverty. This situation makes a mockery of the development agenda of this Round. We will not accept any agreement in Hong Kong that is made at our expense,” stated Arvin Boolell, Minister of Agriculture, Mauritius and ACP Ministerial Spokesperson on Sugar. Luc Magloire Mbarga Atangana, Minister of Commerce, Cameroon and ACP Ministerial Spokesperson on Bananas added that “we should not lose sight of the ultimate objective of this Round, which is to promote development through trade, and not trade for trade's sake. To undermine preferences runs counter to development.”

## December 15 WTO Ministerial Update: Lack of Progress Causes Mounting Frustrations

### SUMMARY

The World Trade Organization (WTO) is holding its Ministerial Conference in Hong Kong. WTO Members have made little progress during the Ministerial Conference's third day, with no progress on the Doha Round's most contentious negotiating area, agriculture. Sources report that trade officials are becoming increasingly frustrated with the talks' lack of progress.

### ANALYSIS

#### I. General Developments

Two "green room" meetings occurred on December 15 to break impasses in key negotiating areas. The first meeting focused on development, and the second meeting focused on agriculture and industrial market access (NAMA). The WTO Director General (this term, Pascal Lamy) organizes green room meetings that normally consist of 30 to 40 trade ministers representing different views on the particular green room topic. EC Trade Commissioner Peter Mandelson has criticized the so-called "green room" meetings, stating that instead of participating in "real negotiations," Ministers deliver position statements.

#### II. Agriculture

- **No progress.** There has been no progress on agriculture negotiations since the beginning of the Ministerial Conference. The EU continues to be under fire for failing to improve its market access offer. Meanwhile, the Cairns Group, in an attempt to break the agriculture deadlock, proposed that the delegations first deal with the sensitive products issue before discussing market access reduction formula. Another positive development that may contribute to narrow differences among developing countries was the first informal "outreach" meeting on December 14 between the different developing country groups (African, Caribbean, and Pacific countries (ACP), least developed countries (LDCs), Caricom, the African Union, G-33, and G-90) to explore whether they can minimize their differences and coordinate their positions.
- **France's Trade Minister confirms EU's hard-line.** On December 14, French Trade Minister Christine Lagarde said that the EU would not put forth new agricultural concessions because it has reached the "outer limits" of what it can offer. She also stated that European Commission has instructed Mandelson to "stick" to the October 28 offer, that the EU could not agree to further concessions on agriculture without additional movement by advanced developing countries such as India and Brazil on industrial products and services. Lagarde's statements are identical to the EU's official position (thus far) in Hong Kong.

- **Food aid.** The discussion on food aid has blocked progress on agricultural negotiations at Hong Kong. The EU has demanded that “other WTO Members” (*i.e.*, the United States) agree on disciplines to convert food aid into cash payments before the EU agrees to an end-date for export subsidies. In the meantime, the WTO Coordinator for LDCs Dipak Patel criticized the EU and the United States for trading accusations over food aid, despite never adequately consulting with the supposed beneficiaries of the food aid – LDCs and developing countries. The LDC coordinator stated that LDCs are looking for long-term and sustainable methods of ending cyclic food shortages, and that LDCs prefer, whenever possible, food aid procured from surplus areas of the same country or region for supply to deficit areas, thereby creating a market for local production and encouraging sustainable agricultural production. The African Group – many of whose members are aid recipients – indicated that in-kind (*i.e.*, non-cash) aid was acceptable in emergencies. In situations where food is available in the region, the African Group suggested that a multilateral mechanism, such as the World Food Program, could be used to ensure that recipient government use cash aid to get the best possible deal. The U.S. has criticized cash-only food aid, claiming that a shift from in-kind to cash aid will result in a net decline in food assistance.

### **III. Non-Agricultural Market Access (NAMA)**

- **NAMA negotiations intensify.** Consultations between NAMA Facilitator Minister Humayun Khan of Pakistan and different WTO Members became more intense as they approached the NAMA group meeting on December 15. Members appear focused on reaching an agreement on the number of bands in the tariff-reductions.
- **Green room meetings.** Ministers at the “green room” meeting on NAMA were asked to accept a simple “Swiss Formula” for tariff cuts. Brazil, India and Argentina, however, argued that all the formula proposals on the table, including their proposal, were based on a “Swiss Formula” that would cut higher tariffs proportionately more than lower tariffs. These countries argued that it was wrong to characterize the “Argentina/Brazil/India” (ABI) proposal as falling outside the Swiss Formula.

### **IV. Services**

- **Debate on language of the services annex.** Disagreements are brewing among WTO Members regarding the language in the Ministerial Declaration’s services annex. Ministers will participate in the services core group meeting on December 16.

- **Members' positions.** Some WTO Members perceive India and Brazil as trying to preserve the current version of the annex. Members, including Malaysia, the ACP Group and the African Group, have asked for alternative language including qualitative modal objectives that could ultimately be treated as setting clear goals for sectoral and multilateral negotiations. However, these groups have yet to make a formal submission of such a proposal. The EU stated that it would endorse the plurilateral approach in order to achieve an enhanced agreement on services and would not insist on including numerical targets in the services text. Still, some have indicated that the EU has asked for a more ambitious services annex and may find a diluted services annex unacceptable. The United States also supports the stance that the services annex should be more ambitious and should include a modal schedule for services commitments.
  
- **India and the United States disagree over Mode 4.** U.S. Ambassador Allgeier stated that the United States opposes an enhanced Mode 4 offer (relating to the movement of short-term service providers) in current services negotiations and claimed that Mode 4 is an area “in which there is very strong Congressional feeling.” He added that short-term service providers are able to enter the United States without difficulty. India opposes the U.S. stance and claims that the results of the services negotiations will be measured by achievements with respect to Mode 4. Indian Minister Kamal Nath stated that the Members seeking enhanced market access in other services areas cannot keep their markets closed to Indian professionals. Nath also argued that Modes 1 (cross-border supply of services) and 4 are development issues and hence should “figure high on the developmental agenda.” The EU has indicated that it is prepared to minimize its “economic needs test” for Mode 4 services suppliers and to eliminate other administrative barriers related to Mode 4.

## V. Development

- **Duty-free / Quota-free.** Clement Rohee, Guyana's Trade Minister and Development facilitator stated that divisions persisted on duty- and quota-free access for LDC exports - the first of the five LDC proposals in Annex F of the draft Ministerial Declaration.
  - **Entry into force of new commitments.** The United States insisted that the duty-free/quota-free initiative be part of the “single undertaking” (*i.e.*, the benefits should not take effect until the entire Doha Round of trade is completed). Allgeier explained that it would be easier for Congress to vote on this initiative if it is part of a larger package implementing the future Doha Round commitments. The EU criticized the U.S. stance because it runs contrary to the understanding among most Members that the initiative would be part of an “early

harvest” deal to be implemented before the full agreement enters into force. India and Brazil, in contrast, stressed that they were ready to do so before the conclusion of the round.

- **LDCs criticize U.S. and Japanese hard-line.** Zambia, on behalf of the LDC Group, issued a statement on December 14 calling on WTO Members to deliver on the LDC initiative at the Ministerial Meeting. The note suggests that after bilateral consultations, the United States no longer has a problem with providing duty-free and quota-free market access to all LDC countries. The United States, however, has reportedly been putting bilateral pressure on LDC negotiators to accept the potential exclusion of some products and countries from duty- and quota-free access. Zambia strongly criticized such a proposal, stating that developed countries would likely exclude most products of export interest to LDCs. Zambia also stated that if countries simply want to enhance existing preference schemes, further discussion was superfluous and therefore there was no need for a Ministerial Decision on this matter. According to Zambia, any market access package for LDCs that did not include all countries and all products would be unacceptable.
- **Safeguard mechanism.** On December 15, EU Trade Commissioner Mandelson floated the possibility that a safeguard mechanism could be included in the initiative to address U.S. difficulties. USTR Portman, however, stated that he was not sure that a safeguard would make sense.

## VI. Aid for Trade

- **U.S. proposed increase.** USTR Rob Portman announced on December 14 that the Bush Administration would ask Congress to double U.S. spending on so-called aid-for-trade for developing countries over the next five years--from \$1.3 billion this year to \$2.7 billion by 2010.

## VII. Fisheries Subsidies Rule

- **Fisheries discussion post-Hong Kong.** WTO Members do not expect that the discussion on fisheries subsidies will be a major issue at the conference. However, several interested WTO Members and multinational organizations held a press conference to emphasize the importance of establishing fishery subsidy rules following the Hong Kong talks. The United States, the EU, New Zealand, Senegal, the Philippines, Brazil, Chile, the United Nations Environment Program (UNEP) and the World Wildlife Federation (WWF), urged Members to agree on disciplines for fisheries subsidies due to environmental concerns. Brazil, Senegal and the Philippines also called for effective special and differential treatment provisions.

## VIII. Contentious Issues

- **Cotton**

- **African cotton producers threaten to leave the WTO.** The four West-African cotton producing countries, Benin, Burkina Faso, Chad and Mali (the so called “C-4”) urged WTO Members to raise the cotton discussion from the technical to the political level after Members in a plenary session were unable to agree on an “early harvest” decision on cotton. They added that they would consider leaving the WTO if Members could not reach a deal in Hong Kong.
- **C-4 reiterates its proposal.** The West African countries, supported by Niger, Cameroon, Guinea, Uganda, Ghana and Rwanda called for a total elimination of cotton subsidies, noting that their farmers are seriously affected by low world market prices. According to the countries’ proposal, WTO Members should remove export subsidies by the end of 2005 and domestic support payments by the end of 2009. In the C-4’s view, subsidies and market prices for cotton are closely linked. To find a quick solution, the countries seek a cotton-deal independent of the stalled agricultural negotiations. Their proposal states that if Members are unable to reach a consensus, the countries would block any agreement on agriculture.
- **No commitments on cotton subsidies.** The United States has not made any commitments on phasing-out their cotton subsidies. USTR Portman stated that such a decision would not improve the situation in the cotton producing countries and cited recent studies that show that even a complete removal of subsidies would only result in a minor increase of the world market price. He thus suggested focusing on aid and tariff reductions on agricultural imports instead of subsidy reductions for cotton products and stated that Members should address the cotton issue only in the context of an overall deal on agriculture.
- **United States proposes duty-free access for African cotton.** The USTR announced a new proposal that would reduce to zero U.S. tariffs on West African cotton imports that enter the U.S market above the tariff rate quota. This offer is conditioned upon the agreement of other developed and developing countries, especially China, India and Pakistan, to likewise reduce their tariffs. The proposal would enter into force only when an overall Doha agreement has been reached.
- **Brazil, India and the EU ready for an early harvest on cotton.** Brazil, India and the EU supported the “C-4” and would be ready to agree on a cotton initiative in Hong Kong that was independent of the overall agricultural negotiations. The EU welcomed the new U.S.

proposal as “a step in the right direction” but added that subsidies create the real problems in this sector. Brazil stated that the G-20 developing countries consider cotton a priority issue at the Conference.

- **Import Tariff for Bananas**

- **Attempts to break a deal fail on a new EU tariff for bananas.** The EU tried unsuccessfully to reach an agreement with Latin American banana exporting countries, including Brazil, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua and Panama, on a new import tariff for bananas. The Latin American countries have opposed the new tariff adopted by the EU Council of Ministers on November 29 that provides for 176 Euro per ton of bananas imported from most-favored nation suppliers, mainly in Latin America, as of January 1, 2006. In addition, an annual import quota of 775,000 tons subject to a zero-duty rate will be opened for imports from ACP countries under the ACP-EU Partnership Agreement. The Latin American countries urged the EU to reconsider their new offer before January 1, 2006. EU Agriculture Commissioner Mariann Fischer Boel stated that the EU would “prefer a negotiated solution instead of a dispute settlement” (Honduras, Panama and Nicaragua have requested WTO dispute settlement consultations). She also stated that a new import monitoring system would help adjust tariffs to compensate for losses if the tariffs resulted in lower Latin American imports.

## December 14 WTO Ministerial Update: Big Agenda, Little Convergence

### SUMMARY

The World Trade Organization (WTO) is currently holding its Ministerial Conference in Hong Kong. The Ministerial's first day focused on agriculture, non-agricultural market access (NAMA) and a "package" of measures in favor of least developed countries (LDCs). According to WTO Director-General Pascal Lamy, these are the areas where progress is most needed, not least because the topics are tactically linked. We review here the status of the Ministerial Conference and its major developments.

### ANALYSIS

#### I. General Developments

WTO plenary sessions, where trade ministers deliver prepared statements, began on December 14; among the 32 scheduled speakers were the United States; the EU; Group of 20 (G-20) developing nations China, Brazil and India; Group of 10 (G-10) members Japan and Switzerland; Cairns Group members Canada and New Zealand; and Zambia as the LDC Group representative. The plenary session also examined the **Cotton Sectoral Initiative** put forward by four West African countries, and the EU's refusal of third party rights to Guatemala and Honduras in the context of the tariff renegotiation on bananas as a consequence of EU enlargement.

During the plenary sessions, **United States Trade Representative (USTR) Rob Portman** singled out the EU for "holding up" WTO negotiations and urged WTO Members to break a deadlock over agriculture. Portman stated that "unless the EU moves on market access, [he does not] see anyone else moving." **EU Trade Commissioner Peter Mandelson** defended the EU's proposal and told WTO Members that the EU has offered generous cuts in its agricultural trade barriers, and that it will not offer further concessions until poorer nations offer to open up their industrial and services markets to foreign competition. Mandelson also warned the delegations that being "too preoccupied" with agriculture could further complicate the Doha Round, which could derail the current goal of concluding the global free-trade treaty in 2006. Mandelson stated that the WTO "will not succeed, in Hong Kong or after, if [it] continues to focus on only one part of the round" and noted that the WTO "cannot afford to wait again."

#### II. Agriculture

- **New deadline for achieving negotiating modalities.** In a joint declaration delivered at the opening day, the G-20<sup>3</sup> said that trade ministers should agree on a "clear and specific work program in agriculture for 2006 so as to conclude the round by the end of that year." The G-20 wants agreement on

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<sup>3</sup> The G-20 comprises Argentina, Bolivia, Brazil, Chile, China, Cuba, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, the Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela, and Zimbabwe.



full negotiating modalities by early April 2006 – with draft schedules submitted no later than three months afterwards. This schedule is at least one week later than the end-March timeframe proposed by the United States and other developed country Members.

- **End-date for elimination of export subsidies.** The EU has been under pressure from other WTO Members to agree on a date-certain for eliminating all forms of export subsidies in the agricultural sector. The United States and the G-20 group of developing countries have proposed that WTO members commit to scrapping agricultural export subsidies by 2010. But the EU has not yet proposed a specific date—despite the fact that WTO members agreed in principal in August 2004 to eliminate such export subsidies. EU Trade Commissioner Peter Mandelson told reporters on December 13 that the EU would not agree on an end date for scrapping export subsidies until other WTO members, notably the United States, had dealt with issues such as export credits and food aid.
- **New disciplines on food aid (“conversion of food aid into cash payments”).** Lamy stated on December 13 that an agreement in Hong Kong on new disciplines on food aid could provide the key for setting a date for the elimination of “all forms of export subsidies,” in accordance with the July 2004 Framework Agreement. As noted above, Mandelson stated that the EU would be far more open to the U.S. proposal to eliminate export subsidies by 2010 if the latter agreed to move away from “fake food aid” to less market-distorting alternatives like cash payments to needy countries that are not in emergency situations. The EU argued that the large structured U.S. program of in-kind food aid in reality supports U.S. agricultural producers. According to the EU, this aid distorts trade and depresses local production, and statistics show that the volume of U.S. food aid directly corresponds to commodity price shifts in the U.S. market. Assistance in cash, at least in theory, would actually boost demand for local production. USTR Portman described the EU as “obsessed” by food aid and suggested that the approach it favored ran the risk of making people go hungry.
- **Agricultural market access (tariff reduction).** Mandelson has insisted that the EU will not be putting forward any new offer on agriculture market access, barring significant movement by key trading partners in other Doha Round negotiating sectors. However, Brazilian officials said Mandelson hinted at some flexibility on the farm issue during December 12 bilateral talks with Brazilian Foreign Minister Celso Amorim. According to the officials, Mandelson said the EU was ready to respond to demands for improved market access on sensitive items through a combination of tariff cuts and tariff quota increases, but that this would be for selected products and not across the board for all items. The sources also said that Mandelson reiterated that the EU would require *quid pro quo* moves by Brazil and other

major developing countries in improved market access for industrial goods and services imports.

- **Sensitive products.** The G-10<sup>4</sup> said December 13 that it was prepared to put forward new offers in order to advance the WTO's stalled talks on farm trade. One G-10 official said the proposal on sensitive products would focus on the treatment of sensitive products (*i.e.*, how the combination of tariff cuts and tariff rate quota (TRQ) expansion for such products should work), rather than the number of tariff lines to be designated as such. In its October 12 agricultural market access proposal, the G-10 expressed its desire to designate between 10-15 percent of its tariff lines as "sensitive." In contrast, the United States and the EU have proposed sensitive designation for 1 and 8 percent of tariff lines, respectively. According to the United States, anything more than 1 percent could undermine a future farm trade agreement.

### III. Non-Agricultural Market Access (NAMA)

- **Flexibilities to exempt industrial products from a formula for tariff cuts.** NAMA facilitator Humayun Khan stated that most developing countries supported the idea that the Hong Kong Ministerial should lead to an agreement giving developing countries flexibilities to exempt industrial products from a formula for tariff cuts. In a December 13 letter, 11 developing countries<sup>5</sup> stated they would like WTO Members to endorse paragraph 8 of the NAMA text<sup>6</sup> in the July 2004 framework agreement on the Doha Round as a separate item independent of any decisions regarding the tariff-cutting formula. In response, Deputy USTR Peter Allgeier indicated on December 14 U.S. opposition to the proposal, stating that it is impossible to agree on this issue separately, as the degree of flexibility which Members possess to exempt products from a formula cut is related to how much they reduce their industrial tariffs within the formula. Developed Members such as the United States and the EU have continually argued that developing countries should trade some of the paragraph 8 flexibilities for favorable treatment under a tariff cutting formula.

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<sup>4</sup> G-10 countries are Iceland, Israel, Japan, Liechtenstein, Mauritius, Norway, South Korea, Switzerland, and Taiwan. The group has some of the highest per-capita farm subsidies and import tariffs among WTO members.

<sup>5</sup> India, Brazil, Argentina, Egypt, Namibia, the Philippines, South Africa and Venezuela

<sup>6</sup> Paragraph 8 of the NAMA framework would allow developing countries to apply less than formula cuts to up to 10 percent of their tariff lines, provided those lines do not exceed 10 percent of the total value of that member's imports, or to keep up to 5 percent of their tariff lines unbound or not apply formula cuts to those lines, provided they do not exceed five percent of the total value of a member's imports. The numbers in paragraph 8 are in brackets, reflecting that they were not agreed.

- **Industrial Tariffs and Development.** On December 13, India joined other developing countries in their criticism of industrialized countries for proposing to cut industrial tariffs for all countries while ignoring the “less-than-full-reciprocity” principles and flexibilities written into the July 2004 Doha Development Agenda (DDA) framework agreement. As Chair of the ad-hoc group of countries – including Argentina, Brazil, Indonesia, South Africa the Philippines and Namibia – India submitted a letter to the WTO conveying the view that the two elements should be respected. In the letter, Indian trade minister Kamal Nath also attacked industrialized countries for not addressing “tariff peaks” and “tariff escalation” which serve to provide special protection for domestic producers in developed countries for items like textiles and leather goods. The minister added that as developing countries are conducting reforms under their respective “autonomous tariff liberalization” plans, some sensitive sectors should be safeguarded. According to Nath, sectors that are labor-intensive, have revenue ramifications and contribute to national employment and output all should be protected and “carefully managed, using the same policy tools that were available to the developed countries at similar levels of development.” In response, EU Trade Commissioner Mandelson stated that developing countries are not cooperating in (NAMA) negotiations, and that they must agree to the “Swiss Formula” based on two coefficients to cut industrial tariffs where less-than-full-reciprocity and flexibility are already part of the formula.
- **EU Comments on the “Swiss Formula”.** Mandelson stated that the basis for discussion in NAMA negotiations has been the simplified “Swiss Formula” with two coefficients, one for developed countries and one for developing countries. The EU has also criticized Brazil for not accepting the formula on industrial tariffs, which has been accepted by the majority of WTO Members, and for continuing to support the ABI alternative formula put forward by Argentina and India. The EU argues that the ABI alternative formula would require greater reductions on tariffs that are higher than a country’s overall average bound rate and lower reductions on tariffs below the average bound rate. The ABI formula would favor countries that maintain higher actual (rather than bound) tariffs on industrial goods, such as India and Brazil. Based on WTO data, developing country bound tariffs on industrial products average 29 percent, compared with 9 percent among the Quad Group (the United States, European Union, Japan, and Canada). Actual applied rates range from 5.4-6.9 percent among the Quad countries, whereas applied rates among developing countries tend to be much higher (32 percent in India and 14 percent in Brazil).
- **Brazil’s and India’s NAMA proposals.** Minister Kamal Nath stated that India is prepared to match any tariff cuts by the EU on industrial goods with a two-thirds reduction in its own import tariffs. This comment may serve as

an impetus for agreements with respect to agricultural goods since the EU has conditioned its October 28 proposal on agriculture goods on progress being achieved in NAMA and services. The EU has proposed that developing countries accept a 15 percent cap on industrial tariffs, with developed countries agreeing to a 10 percent cap. Brazil has offered to cut industrial tariffs by half if the EU agrees to do the same with respect to agricultural products. Brazil has argued that the EU is trying to get developing countries to accept a 75 percent average reduction on industrial goods while only offering to cut agriculture tariffs by 39 percent on average. The EU has by asking India to make a “proper” detailed offer on paper to all WTO Members, as Brazil and India have made their proposals only in informal discussions. Regarding Brazil’s NAMA offer, Mandelson said that the best way to proceed was to “reformulate it fully, express it clearly, put it on the table, and then we can all sit down and discuss it formally.”

#### **IV. Services**

- **Progress on consensus text.** The services facilitator, Korean Minister Trade Hyun Chang Kim, has begun his work to develop a consensus services text. Ministers are scheduled to attend a services core group meeting on Friday December 16, 2005.
- **EU’s Stance.** The EU has stated that it will endorse the plurilateral approach as an alternative to the traditional bilateral request-offer process to get an enhanced agreement on services and will not insist on including numerical targets in the services text. This development should come as good news to the United States, as it has endorsed the plurilateral approach and denounced the EU’s proposal on numerical targets as unrealistic.
- **African Group comments on services annex to Hong Kong declaration.** WTO Members of the African Group and some Caribbean countries expressed their desire for several changes to the services annex of the draft Hong Kong declaration. In this respect, some of the African countries have thrown their support behind an effort by the Association of Southeast Asian Nations (ASEAN) to strike all references to negotiating objectives for modes of supply and to incorporate them into a list that could be read as ultimately setting goals for sectoral negotiations.

#### **V. Development**

- **Priorities in the development agenda.** Guyanese Foreign Minister Clement Rohee is facilitating the talks on development and indicated that he would be meeting with individual delegations for so-called “confessionals.” Although charged with facilitating all development topics not classified as “implementation issues,” Rohee suggested that his main focus would be on

the five LDC proposals for amendments to the SDT provisions of WTO agreements present in Annex F of the draft ministerial declaration text.

- **Duty-free / Quota-free access.** The Group of Six (United States, the EU, Brazil, India, Australia and Japan) remained at an impasse over how to address the duty-free and quota-free concessions to LDCs, the core element of the “early harvest” Development package.
  - o **Binding vs. non-binding:** Japan and the United States expressed reluctance to provide binding duty-free and quota-free concessions to all LDCs. However, Brazil said any “duty-free/quota-free” market access package must have some binding commitments. Without security and predictability in a “duty-free/quota-free” offer, LDCs would fear they could be subjected to political pressures. India and Australia said they are ready to agree to a package that is long-lasting and without further complications.
  - o **Eligibility:** The EU proposes to extend duty and quota free access to all LDCs. The United States expressed reservations about including Bangladesh and Myanmar in the group of eligible LDCs. Brazil, India and Australia agreed that it would be wrong not to include all LDCs as beneficiaries.
  - o **Product coverage:** The EU demands that countries agree to extend duty and quota free access for all products. Japan said it wanted to exclude rice and fishery products. The United States also wants to exclude some products from LDCs that are already competitive in certain sectors, such as textiles, or because they are highly protected and/or subsidized in the United States, such as sugar, dairy, and peanuts. Brazil, India and Australia agreed that it makes sense to exclude some products of particular sensitivity.
  - o **Outcome:** USTR Portman suggested that trade ministers reach a political understanding this week and finalize details at a later date. Brazil and India insisted that the Hong Kong meeting deliver the full LDC package without delay and opposed negotiating the details after Hong Kong.
- **Critics to EU’s hard stance.** Sources speculated that the EU is interested in keeping the ministerial focused on the development package to delay negotiations on agriculture, where the EU is under pressure to agree to an end date for export subsidies at the ministerial. When challenged to match the EU’s quota- and duty-free market access scheme for LDC exports, the United States cited a recent World Bank study indicating that once requirements such as standards and rules of origin were taken into account, the United States was actually more open to LDC exports than the EU.

## VI. Aid for Trade

- **Agreement contours.** The contours of any aid for trade deal that might be reached in Hong Kong are not clear. Currently, countries seem to be announcing funding commitments, but saying little about how the money would be spent. It does, however, seem likely that the bulk of such assistance would be delivered bilaterally. At the press conference with Mandelson and Portman, Rwandan Finance Minister Paul Manasseh Nshuti stressed that aid for trade should come in the form of grants, and should not prejudice recipient countries' positions in the negotiations.
- **Critics to aid for trade.** Although the ministers agreed that aid for trade was a necessary complement to – rather than a substitute for – trade liberalization, some development campaign groups have accused the would-be donors of using their announcements to deflect attention from their failure to agree on pro-poor trade reform. Furthermore, the promises of increased aid may prove to be capricious: USTR Portman warned that an agreement on aid "could be lost" if a Doha Round deal eventually failed to come together.
- **Announcements.**
  - **Japan** has announced a dramatic increase in aid for trade spending. Japan announced that it would spend \$10 billion over three years on aid for trade for LDCs, to help build infrastructure such as roads and ports, as well as to revamp their customs systems.
  - **The EU** unveiled a plan on December 13 to ramp up similar grants to poor countries. The EU committed to step up annual spending on aid for trade to 2 billion Euros by 2010. One billion of this will come from Member states that agreed on December 11 to the increase (from 400 million Euros per year); the remainder will come from the European Commission.

**The United States** pointed to the \$1.34 billion per year that it spends on trade-related technical assistance, much of it to physical infrastructure and trade facilitation. Sources suggest that the United States might reveal additional spending on December 14.

## AEI and the Aspen Institute Host Members of Congress to Discuss “Breaking the Doha Deadlock”

### SUMMARY

On December 8, 2005, the American Enterprise Institute (AEI) and the Aspen Institute hosted a panel on “Bipartisan Action on Agricultural Reform: Breaking the Doha Deadlock.” Congressmen Jim Kolbe (R-AZ) and Adam Smith (D-WA) provided their analysis of current World Trade Organization (WTO) agriculture negotiations as part of the Doha Round. We review here their assessments of the negotiations.

### ANALYSIS

On December 8, 2005, AEI and the Aspen Institute hosted a panel on “Bipartisan Action on Agricultural Reform: Breaking the Doha Deadlock.” Congressmen Jim Kolbe (R-AZ) and Adam Smith (D-WA) provided their analysis of current WTO agriculture negotiations as part of the Doha Round and where the United States stood with respect to its own agriculture program. **Robert Kapp, counsel from Hogan & Hartson LLP** and **Roger Bate, AEI Fellow** moderated the discussion, which focused on how the United States could help break the current impasse in agriculture negotiations and what the necessary steps following the December WTO ministerial in Hong Kong.

- **Rep. Jim Kolbe (R-AZ)** unveiled a December 8<sup>th</sup> letter signed by 30 Members of Congress that urges the Bush Administration: (i) to “work proactively during the Hong Kong ministerial”; (ii) to push for U.S. leadership in WTO negotiations; and (iii) to encourage further participation from other countries. Kolbe stated that the key to breaking the agriculture negotiations’ impasse is solving the issue of trade-distorting agriculture subsidies. He also noted that “success in the Doha Round is essential” and stated that trade liberalization enhances potential economic growth. Kolbe also stated that the U.S. agriculture proposal is a “good start” but noted that United States Trade Representative (USTR) Rob Portman needs to “push other countries” to provide more ambitious proposals to advance the agriculture negotiations. Kolbe called on the EU to come up with a new agriculture offer and also stated that developing countries “must also give in this [Doha Round] and not just take.” On developing countries and their interaction with the United States and other developed nations, Kolbe highlighted the importance of trade-capacity building. Kolbe concluded that the WTO could be more effective if it improved its dispute-settlement mechanism by making panel and Appellate Body decisions binding upon WTO Members.
- **Rep. Adam Smith (D-NY)** noted that the focus of the WTO’s Doha Development Agenda is on “equalizing disparate income levels throughout the world” and stated that trade-distorting subsidies mostly affect least

developed countries (LDCs) that must “compete with developed countries in a subsidized environment.” Smith referred to New Zealand and Australia as good examples of countries that have unilaterally removed trade-distorting agriculture domestic support and noted that if these two countries can prosper after removing subsidies, “so can the United States.” Smith expressed concern that the EU’s agriculture proposal was “not at the same level” as other countries’ proposals, especially that of the United States. On the U.S. Farm Bill set to expire in 2007, Smith stated that the United States has a “golden opportunity to fix the U.S. agriculture program” but noted his desire to have the United States first tackle and complete the Doha Round before moving on to the Farm Bill’s complex legislation.

### ***OUTLOOK***

Kolbe’s reference to developing countries and their involvement in WTO negotiations echoes the United States’ urging of developing countries, including India and China, to adopt more of a leadership role in the WTO. Smith’s examples of Australia and New Zealand’s unilateral liberalization indicates that members of Congress understand that subsidies are not necessary to be competitive in the global market, but it is unlikely that the United States will make unilateral subsidy cuts in the face of a strong farming lobby. Moreover, Kolbe’s suggestion to make WTO dispute settlement decisions binding upon WTO Members is likely unrealistic, as few Members, including the United States, would be willing to agree to such a move based on sovereignty concerns and a desire to maintain the flexibility that the current system provides.

The congressmen also provided valuable insight on educating the American public on the “virtues of free trade.” During the question-and-answer period, a participant brought up the point that an increasing percentage of the American population is adopting the **mercantilist** point of view where they see exports as beneficial and imports as harmful - a direct contradiction to the **free-trade** view that exports and imports are equally beneficial. When asked how the American public’s mind could be swayed from the mercantilist to the free trade viewpoint, Smith answered that it “is not enough to merely throw facts and figures into the faces of Americans.” He suggested that the United States must educate the public on the “virtues of free trade” by addressing the public’s insecurities and by demonstrating how “imports can encourage competition and innovation that in turn encourage lower prices.”



## WTO Members Must Show Reciprocity To Achieve A Successful Outcome at Hong Kong

### SUMMARY

On December 7, 2005, the International Institute for Economics (IIE) hosted a panel on the outlook for the World Trade Organization (WTO) Ministerial in Hong Kong. The speakers provided their views on the current status of negotiations and policy recommendations on how to achieve a successful outcome in Hong Kong. We review here those assessments.

### ANALYSIS

On December 7, 2005, the International Institute for Economics (IIE) hosted a panel on the outlook for the WTO Ministerial. The speakers provided their views on the multilateral trade negotiations and policy recommendations on how to achieve a successful outcome at the ministerial:

- **Jeffrey Schott, Senior Fellow at IIE**, noted that WTO Members will not achieve the “development goals” at Hong Kong, and that no major advancements on the trade agenda (*i.e.*, agriculture, NAMA, and services) will occur. According to Schott, countries have more chances to advance agricultural export subsidies talks after the Ministerial, as little progress on this issue will take place in Hong Kong. Schott noted that the talks have stalled due to France’s reluctance to make ambitious concessions on agriculture relative to other WTO members (*e.g.*, United States, Brazil and other European countries). He stated that as long as countries do not undertake “reciprocal commitments” to reduce agricultural tariffs, it will be very difficult to register progress in other areas. Schott also stated that developing countries like India and Brazil are assuming leadership roles by making deep cuts in their agricultural tariffs. Schott opined that “key developed countries,” including Japan and China, must follow suit. Japan and China have been relatively silent thus far.
- **Arvind Panagariya, Professor of Economics and Jagdish Bhagwati Professor of Indian Political Economy at Columbia University**, provided the most optimistic view on the outcome at the ministerial and the future of the Doha Round. According to Panagariya, phasing out trade distorting subsidies in developed countries by 2010 should not pose a big challenge to developed countries because the figures are far smaller than those cited by the media. Panagariya argued that “export subsidies fluctuate in the \$3-5 billion range and domestic subsidies under negotiation are below \$100 billion.” He stated that “these numbers are much smaller than commonly believed, making tariffs the most serious barrier to agricultural trade.” To achieve progress on market access on agriculture, Panagariya stated that countries must show reciprocity: large developed countries and developing

countries alike must make concessions among themselves. According to Panagariya, countries will not make serious commitments on agricultural market access at Hong Kong and are likely to reserve their “best offers” for 2006.

- **William R. Cline, Senior Fellow at IIE and the Center for Global Development**, noted that there is a need for reciprocity to advance the Doha Round: developing countries should make concessions, but developed countries should go even further to bring every country on board. In particular, fewer developing countries must obtain concessions to prevent them from blocking the negotiations. Cline argued that countries should not make reductions from “total bound levels” and instead should make them from actual subsidies levels. The “amber box” is a narrow approach (with a complicated formula) that includes only domestic support measures considered to distort trade but fails to reflect real subsidies levels. Cline also stated that the WTO must improve its surveillance of subsidies because it takes the organization too long to release subsidy figures, and when the numbers are finally released, they are outdated.
  
- **Fred Bergsten, Director of IIE**, gave a pessimistic outlook for Hong Kong and stated that the Doha Round could become the first multilateral trade negotiating round to fail since the 1950s. According to Bergsten, if the Doha Round fails, four consequences could result: (i) loss of potential to increase global income; (ii) “backlash protectionism”; (iii) erosion of the WTO as a credible multilateral institution; and (iv) greater proliferation of bilateral free trade agreements (FTAs) that could undermine the multilateral trade regime. Bergsten noted that the negotiations are proving difficult because: (i) traditional trade barriers are difficult to eliminate with new items joining the agenda (*e.g.*, intellectual property rights, services, etc.); (ii) the countries with significant subsidies – the “countries that count” – are a broad group and can create significant resistance to reductions; and (iii) the external environment is “hostile” to the large agenda. According to Bergsten, chief trade negotiators (*e.g.*, United States Trade Representative (USTR) Rob Portman and the EU’s Peter Mandelson) are not going to decide Doha’s outcome, and a **key barrier** to a successful outcome is the “fierce domestic opposition to trade liberalization in the various WTO member countries.” A successful revival of the Doha Round will require policy actions at the domestic level from key developing countries and all developed countries:
  - o The United States must correct its budget deficit and continue leading the round;
  - o The EU must pursue substantial domestic reforms to modify its agricultural policies; and

- o China and Japan must allow for a considerable increase in the value of their currencies relative to other world currencies.

To provide the necessary momentum to conclude the WTO talks, leaders from the Group of Seven (G-7) and the Group of 20 developing countries (G-20) will have to meet again in early 2006 to deal with the “toughest Doha issues” if they want to obtain a successful outcome for the Round.

### ***OUTLOOK***

All panelists agreed that the December WTO Ministerial in Hong Kong would not bring substantial progress on the Doha agenda, particularly in agriculture. The speakers urged countries, especially developing and less developing countries, to demonstrate reciprocity to extract key concessions. Most of the speakers agreed that an increased focus on developing nations might prove the necessary ingredient to reinvigorate WTO negotiations. Furthermore, Hong Kong’s limited results will place intense pressure on WTO members to make concessions in 2006. According to the United States, the July 2007 expiration of Presidential Trade Promotion Authority (TPA) mandates tight deadlines for U.S. trade negotiators. It is expected that WTO Members including the United States will intensify negotiations in early 2006 with the goal of completing the agreements by the end of the year. This deadline would allow for six months to complete domestic approval and implementation of the agreements – exactly the minimum amount required under U.S. law – before TPA expires in July 2007. According to Bergsten, if the Administration is able to prove sufficient progress on bilateral FTAs and at the multilateral level, the U.S. Congress might be willing to consider an extension of TPA, giving the United States more time to conclude the Round. It remains to be seen whether the Administration will have the political will – or whether USTR can demonstrate that past multilateral agreements round and other FTAs have provided tangible economic benefits – to gain TPA approval in 2007 when many in Congress are expressing dissatisfaction with WTO negotiations and dispute settlement cases.

## **Preparations and Prospects for the Hong Kong WTO Ministerial Conference**

### ***SUMMARY***

The General Council of the WTO agreed on 2 December to the draft Ministerial Declaration. It will now go forward for further negotiation and adoption by Ministers at the Hong Kong Ministerial Conference. The draft reflects the November decision that lack of convergence made it necessary to downgrade or “recalibrate” objectives for Hong Kong: it does not contain draft modalities for the negotiations on agriculture and non-agricultural market access (NAMA) but proposes a commitment to establish them early in 2006. This text implies a subsequent meeting at the Ministerial level, probably at the end of March. The new Conference objective is to make substantive progress wherever possible to improve the chance of a March 2006 agreement on full modalities and the Round’s conclusion in 2006, while avoiding potentially damaging divisions over one or more of the agenda’s more contentious issues. Deferment of the most difficult decisions on modalities, however, does not guarantee a peaceful meeting.

A failure in Hong Kong will almost certainly necessitate the extension of U.S. Presidential Trade Promotion Authority (TPA), formerly known as “fast-track authority,” beyond its scheduled expiration date in mid-2007. However, such an extension would come with a price. Congress may well reduce the negotiating flexibility of U.S. negotiators, particularly on politically-contentious issues such as anti-dumping. Thus, rather than simply extending the deadline, any Congressional approval to roll forward the TPA’s expiry could make the ultimate conclusion of the Round more difficult. This could be one of the costs WTO Members may have to pay for a weak outcome in Hong Kong.

### ***ANALYSIS***

#### **The Draft Declaration**

The text submitted to Hong Kong consists of the draft Declaration plus six Annexes, on Agriculture, NAMA, Services, Rules (anti-dumping and subsidies), Trade Facilitation and Special and Differential Treatment for developing countries. Except for that on trade facilitation, all of the Annexes have been submitted on the responsibility of the respective Chairmen rather than on the recommendation of WTO Members, and therefore do not commit Members unless adopted by the Ministers. The draft Declaration itself has been characterized, by India for example, as “bland” and it is clearly designed to avoid controversy so far as possible while preserving whatever degree of convergence has been attained in the different negotiating groups and committing Members to intensify their efforts. Much of the Declaration reaffirms existing commitments on development issues, including Special and Differential Treatment for developing countries, integration of least-developed countries, technical assistance and transfer of technology. This modest level of ambition for Hong Kong became inevitable when it was recognized that agreement there on the modalities for agriculture and NAMA could not be attained, and that real progress in most other areas would in consequence be very difficult. The Doha Round is proceeding on the basis of the so-called “single undertaking,” meaning that

nothing is agreed until everything is agreed, and progress on relatively uncontroversial subjects has been held hostage to consensus on the most difficult issues, most notably agriculture.

The draft Declaration in particular calls for agreement on a date for the establishment of modalities in agriculture and NAMA. It is generally assumed that the date to be inserted here is the end of March 2006. This would leave nine months for the highly technical work of converting the agreed formulae which will be the essence of the modalities into schedules of legally-binding commitments. Completion of the negotiations around the end of 2006 has been understood to be essential because TPA will expire on 1 July 2007, and it will be necessary to conclude the final agreement on the Doha Round in advance of this date. Under U.S. law, a report on proposed changes to US trade laws must be submitted to the Congress 180 days in advance.

### **The Annexes**

The six Annexes are of two different types. Those on **Agriculture** and **NAMA** are not draft agreements but detailed personal reports by the respective Chairmen, Ambassador Falconer of New Zealand and Ambassador Johannesson of Iceland, on the current state of work on every element of the negotiations. They identify areas of convergence (where they exist) and the divergences that remain, and they make it very clear that agreement on modalities is still very difficult. On NAMA, Ambassador Johannesson concludes: “Members are far away from achieving full modalities. This is highly troubling.” In this negotiation most of the issues have a strong North-South dimension and the main interest of many preference-receiving countries is to preserve their preferential access to developed country markets by minimizing MFN tariff reductions. In agriculture the recent focus of dissension has been the market access “pillar,” where improved tariff reductions offered by the EU in its 28 October proposal have been widely attacked – particularly by the United States – as inadequate. The conditions attached to the EU proposal – including deeper tariff cuts by developed countries in NAMA and the adoption of mandatory numerical targets for improved commitments in services – have also met fierce opposition. There is more convergence – though it is wholly conditional – on domestic support and export competition.

Ministers of the EU, the USA, Brazil, India, Japan and Australia announced on 3 December that they would reach agreement by 1 March on the treatment of all forms of export subsidies in agriculture, including a date for their elimination. This issue will therefore not be settled at Hong Kong, as agricultural exporters had hoped. The EU has insisted on parallel treatment of export subsidies and other forms of support, such as export credits and export monopolies. Agreement on this by 1 March would facilitate agreement on full modalities by the end of that month. The extent of substantive negotiations in Hong Kong on agriculture and NAMA is not yet clear, other than on the deadlines for modalities and tabling of schedules of concessions. The Annexes on these subjects commit only the Chairmen, and some delegations see little hope of making progress on them in December. However, the texts on these subjects and on “special and differential” treatment have already proved controversial, and it is unlikely that they can be kept under wraps at Hong Kong, particularly because of the perceived (though fallacious) “imbalance” between the Annexes on services, agriculture and NAMA.

Although there are still wide divergences in both agriculture and NAMA, the parameters for negotiation – the range of possibilities – are now well established. The decisions to be taken within these parameters are political, not technical. To make a deal all sides must move: **the question is whether they can do so in time.**

The remaining Annexes take the form of draft agreements, even though only one of them – that on **Trade Facilitation** – is submitted with the agreement of the negotiating group itself.

The Annex on **Services** proposes objectives for the negotiations on new commitments and on rules, and endorses the technique of plurilateral or “critical mass” negotiations on specific sectors, in addition to the bilateral request-offer process, which is still supposed to be the main method of negotiation. Deadlines for the submission of improved offers and final commitments are also proposed. The text, therefore, appears more substantive than that on agriculture or NAMA and has been attacked by NGOs and some developing countries as a result. In fact the “objectives” are merely indicative, not binding in the way that an agreed tariff reduction formula would be, and the technique of plurilateral negotiations – the results of which would apply to all Members on the MFN principle – is explicitly approved in the Guidelines for this Round and in the GATS itself. Because it will not now be possible by the end of 2006 to produce substantially improved commitments through the request-offer process, plurilateral negotiations on sectors of key interest offer the best hope of an acceptable package of results in services, even though the difficulty of achieving a “critical mass” of participating countries should not be underestimated.

Though the Services Annex contains several commitments on assistance to least-developed countries in participating in the negotiations, the draft Declaration says that LDCs “are not expected to undertake new commitments” on services. This is consistent with the “Round for free” approach to LDCs, but it appears to assume that their sole interest in the Services negotiations is as exporters of services; in reality their most urgent need is to upgrade their domestic services infrastructure, often through inward investment, and the main value to them of making GATS commitments is to promote this.

The Annex on **Anti-Dumping and Subsidies and Countervailing Measures** invites Ministers to “mandate the Chairman to prepare, early enough to assure a timely outcome within the context of the 2006 end date and taking account of progress in other areas of the negotiations, consolidated texts of the AD and SCM Agreements that shall be the basis for the final stage of the negotiations.” The main area of contention will be the inclusion, at the United States’ insistence, of anti-circumvention provisions that are not now covered by the Agreements. The US Administration is already under considerable Congressional pressure not to accept any “weakening” of US trade remedy laws.

The Annex on **Trade Facilitation** also calls on Members to “move into focused drafting mode early enough ... to allow for a timely conclusion of text-based negotiations on all aspects of the mandate.” This subject is more advanced than any other in the Doha Agenda and holds out good hope of results that will be of real benefit to business and the participating governments.

The Annex on **Special and Differential Treatment** offers alternative provisions on duty free and quota free access for all products of LDCs and on flexibility for their observance of

WTO obligations, as well as recognizing that they will make limited commitments in the Doha Round. It highlights the growing issue of the status of LDCs within the WTO system.

### **Development Issues**

Development issues will be a dominant feature of negotiations in Hong Kong, although one longstanding issue which could have been seriously disruptive has been resolved, by a decision of the General Council taken on 6 December. The Council agreed a formal amendment to the TRIPS Agreement which will permit any Member to export patented pharmaceutical products made under a compulsory license to countries which are unable to produce them. The purpose is to enable poor countries to obtain cheaper “generic” versions of patented medicines. This is the first formal amendment of any of the core WTO Agreements: it makes permanent the “waiver” from the TRIPS Agreements first granted in 2003. It is understood that the provision will be used only to deal with public health problems, not for commercial or industrial purposes.

Nevertheless, some development issues remain which have the potential to derail the Conference, as in Cancun, if not carefully handled. Apart from the major problem of preference erosion in NAMA and agriculture and the implementation by developing countries of Uruguay Round commitments, the issue of **production subsidies in the cotton sector**, above all in the United States, is still unsettled. It is not decided whether the Declaration will merely assign priority to the cotton sector within the agriculture negotiations or whether it will commit to an “early harvest” result for cotton. The United States has sharply increased financial assistance to the four West-African countries most concerned – Burkina Faso, Benin, Chad and Mali – to help develop their cotton production and marketing capacity.

Another potentially disruptive issue is **bananas**. The Latin American exporting countries recently won two WTO arbitrations against the proposed EC banana regime, only to have the EC set an unacceptably-high tariff level, coupled with the continuation of preferences for the countries of the African, Pacific and Caribbean (ACP) region. In Hong Kong, the Latin Americans may seek to maximize pressure on the EC to resolve this issue and thereby avoid yet more litigation in 2006.

There is a strong impetus by six major participants (the United States, EU, India, Brazil, Japan and Australia) towards agreement on what has been called a “development package” or an “early harvest” of agreements designed to benefit LDCs. Commitments on duty-free and quota-free entry for their exports will form an important part of any such package. Even this, however, will not be free of controversy, as LDCs are seeking a binding commitment to provide such access, but the United States and probably others would rather it be a matter of autonomous non-binding commitments, on the model of existing preferences. Product coverage will also be an issue; it is doubtful whether sensitive products like textiles and clothing or sugar, in which some LDCs are highly competitive, would be included. Some Latin American countries are also concerned about the extension of further preferential treatment to LDCs, largely in Africa, that are their direct competitors in tropical products.

## **Organization of consultations**

The Chairman of the Conference, Hong Kong's Secretary for Commerce, Industry and Technology Mr. John Tsang, announced on 2 December that he had asked six colleagues to act as facilitators or "Friends of the Chair" in leading consultations on specific issues. The Ministers who have agreed to serve are:

- Mr. Humayun Khan of Pakistan (NAMA)
- Mr. Mukhisa Kituyi of Kenya (Agriculture)
- Mr. Clement Rohee of Guyana (specific development-related issues).

Three "facilitators at large" will deal with Services, Rules and other issues. They are:

- Mr. Hyun Chong Kim of Korea
- Mr. Jonas Støre of Norway
- Mr. Ignacio Walker of Chile.

The function of the facilitators is: (i) to chair consultations and the negotiation of agreements or textual improvements wherever possible; (ii) to defuse conflicts; and (iii) to ensure transparency by keeping the entire membership informed of the progress of their work. This procedure worked very well at Doha, but less well at Cancun.

## ***OUTLOOK***

It is well understood that the stakes are very high. For all their difficulties, the negotiations on agriculture and NAMA will produce very significant liberalization if they deliver results on the scale of what is now under discussion. On the other hand, a failed Hong Kong Ministerial Conference could doom the Doha Round and weaken the WTO, accelerating the powerful trend towards bilateral and regional trade agreements at the expense of multilateralism. Cancun's failure very clearly had this effect. There is therefore a strong commitment in principle to make the Conference a success, though little sign of readiness to make the substantive concessions which will be necessary for success in the Round itself.

Success at Hong Kong would entail, among other things, producing a commitment to agree to agriculture and NAMA modalities in March with sufficient conviction to answer the question of "why would it be easier in March to do what cannot be done in December?" The answer lies in political developments, above all in the EU: the Commission must have some room to negotiate. **If its current offer really is its bottom line there will be no deal.**

If modalities were agreed in March, the question would become whether this would leave time for completion of the market access negotiations in 2006. In agriculture and NAMA it probably would. In services, probably not, leaving another important question: **Could liberalization in agriculture be delivered without acceptable commitments on services?**



If an acceptable deal were not available by the end of 2006 or soon after, it would be necessary to ask whether the expiry of TPA in July 2007 really is the end of the Round. It has been assumed that this is so, but commentators have pointed out that whenever it has been necessary in the past, US negotiating authority has been renewed, sometimes in the face of strong opposition. President Bush has a Republican majority in the House and the Senate, but 2007 is an election cycle away. Even assuming Republicans retain their majorities, obtaining TPA renewal would be a fight, as there will be difficult issues for the US in any multilateral package – in trade remedy laws and agricultural support, for example. The question might then become whether in a pre-Election year the Administration would find the Doha package worth fighting for. Much better do it in 2006.

## **Multilateral Highlights**

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### **U.S. Asserts Compliance with WTO Ruling on OCTG Sunset Reviews; Argentina Disagrees, Setting the Stage for a Potential Compliance Panel Proceeding**

U.S. trade officials stated that the United States had complied with a World Trade Organization (WTO) Appellate Body (AB) ruling that partially upheld Argentina's complaints against U.S. sunset review practices. During a December 20, 2005 meeting of the WTO's Dispute Settlement Body (DSB), the United States was pleased to report that it had implemented the WTO ruling. At the same DSB meeting, Argentina took the position that the U.S. measures did not comply with the rulings and recommendations of the DSB, and that the U.S. measures were otherwise inconsistent with U.S. WTO obligations.

At the WTO, Argentina had successfully challenged certain statutory and regulatory provisions of U.S. law relating to the "waiver" of respondent parties in sunset reviews. Argentina also successfully challenged the U.S. Department of Commerce's (DOC) 2000 sunset determination that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping.

On October 28, 2005, DOC announced amendments to its regulations governing sunset reviews in response to the WTO ruling. The United States made no changes to the provision of the Tariff Act of 1930 that was found to be WTO-inconsistent. The United States takes the position that the DOC regulatory modification made it unnecessary to amend the U.S. statute. Under WTO rules, a Member's administering authorities (DOC and the International Trade Commission (ITC) in the United States) must revoke an antidumping or countervailing duty order within five years unless the agency determines that revocation would be (i) likely to lead to continuation or recurrence of dumping or subsidization, as the case may be, and (ii) likely to lead to continuation or recurrence of injury to the relevant domestic industry. In response to the adverse AB ruling, DOC amended its "waiver" regulations that address the treatment of respondent interested parties who choose not to participate in DOC sunset reviews or who are "deemed" by DOC to have waived their right to participate. DOC also clarified the basis for parties' participation in a public hearing during an expedited sunset review.

On December 16, DOC issued a "Section 129 Determination" in response to the WTO ruling that DOC's 2000 sunset determination was illegal. DOC again determined that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping.

Argentina brought the WTO challenge against DOC's 2000 expedited sunset review of a 1995 antidumping order against oil country tubular goods (OCTG) from Argentina. In November 2004, the AB upheld the WTO Panel's finding that the U.S. sunset review "waiver" provisions allow DOC to make an affirmative likelihood determination without carrying out a substantive review based on positive evidence. The AB also held that the deemed "waiver" provisions did not allow interested parties the right to defend themselves in sunset review proceedings. The United States did not appeal the Panel's finding that DOC's sunset determination that dumping would be likely in the event of revocation of the antidumping order

was not based on positive evidence and was inconsistent with U.S. obligations under the WTO Antidumping Agreement. Given the parties' disagreement as to whether the measures taken by the United States constitute compliance with the rulings and recommendations of the DSB, it is likely that the matter will be referred to a WTO compliance panel.

### **W&C Hong Kong Report: USTR Briefings Show Little Movement During Ministerial's Early Stages**

On December 14, 2005, United States Trade Representative (USTR) Rob Portman held a briefing in Hong Kong to discuss the current status of negotiations at the World Trade Organization's (WTO) Ministerial Conference. Acting Assistant USTR for Services and Investment Christine Bliss gave a similar briefing to members of the business community at an ABC Doha-sponsored event. Portman stated that the focus during the first several of days of the Ministerial has been on duty-free and quota-free market access for least developed countries (LDCs). According to Portman, the United States has had a very open policy towards LDCs. He contrasted LDC imports into the United States, which have been increasing in recent years, with those into the EU, which have declined over the same period.

Portman noted that **food aid** has emerged as a contentious issue, as the EU has demanded that WTO Members terminate food aid programs, even in emergency situations, and provide aid only in the form of cash payments. Portman opined that the food aid issue is simply a EU attempt to divert attention from the contentious issue of agricultural market access. Bliss echoed Portman's statements and noted that the EU is pushing for aid in the form of cash only.

Portman reported that over the next few days, WTO Members will focus on resolving the "smaller" issues to prevent their burgeoning into "big" issues at a later stage in the negotiations. They will also "keep the pressure on" in the negotiations' primary areas. As an example, Portman noted that **non-agricultural market access (NAMA)** discussions are still stuck on the type of tariff reduction formula to adopt, with several countries maintaining that they will not adopt the "Swiss Formula" until Members agree to flexibilities for developing countries **and** concessions on agricultural market access and subsidy reduction.

On **agriculture**, Portman stated that many Members assert that they cannot access international agricultural commodity markets, despite a comparative advantage in agriculture, because of market distorting agricultural subsidies. These countries thus consider agriculture as the talks' driving force. Portman stated that although the United States has proposed to cut bound levels of domestic support (AMS) by 60 percent, the proposal will not stand unless the EU makes a corresponding commitment on agricultural market access.

According to Portman, the United States has been well served in the talks because of: (i) its aggressive posture, which has added positive energy to the talks; and (ii) U.S. emphasis on "parallelism" as the key to unlocking the Doha Round.

On **services**, Portman reported that the United States is "fighting hard" for a high level of ambition in the services negotiations and is pushing to maintain, at the minimum, the draft text's current language. Portman noted that the United States realizes that a WTO-wide obligation to

adopt mandatory benchmarks for services commitments is unrealistic and has therefore proposed a more “practical” plurilateral request-offer approach. During her briefing, AUSTR Bliss noted that the United States maintains a high level of ambition in the context of services and considers services a key market access pillar along with agricultural market access and NAMA. She stated that the United States is focusing on shoring up the Ministerial text and the Annex on Services, as it would have preferred stronger language in the draft ministerial text. According to Bliss, the U.S. trade officials believe that the services text has been watered down due to compromises made to meet the interests of certain WTO Members.

### **LDC Initiative Takes Center Stage at Ministerial**

World Trade Organization (WTO) Director General Pascal Lamy stated that WTO Members must continue “making strides in agriculture and non-agriculture market access (NAMA)” during the WTO’s Hong Kong Ministerial. Lamy also noted that the development package for least developed countries (LDCs) should not be the only outcome of the Ministerial and should not “provide an excuse for not moving in other sectors.” He did, however, state that “negotiating energy is limited” and opined that because of this lack of momentum, agriculture and NAMA would come second to the LDC package.

During the first day of the Ministerial Conference, the United States and Japan issued their stances on the LDC package. United States Trade Representative (USTR) Rob Portman stated that the United States should provide more duty-free and quota-free access for LDCs, “provided [the United States] can limit the scope of those concessions.” Portman stated that the United States could support the LDC initiative if it could exclude products from LDCs that are already competitive in certain sectors, such as textiles. He also stated that the United States might be willing to provide additional access for LDCs through its Generalized System of Preferences (GSP), although the program is set to expire in 2007. GSP currently does not cover textiles, but Portman stated that it “might be possible” to include textiles in the future. Secretary of Agriculture Mike Johanns stated that the United States would be “paying attention” to sugar, dairy, and peanuts – highly protected and/or subsidized agricultural products in the United States – in the context of duty-free and quota-free access for LDCs.

Meanwhile, Japanese officials stated that Japan will exempt certain sensitive products from its duty-free and quota-free initiative “in favor of imports from” LDCs. According to Japanese officials, Japan is currently providing duty-free and quota-free entry for nearly 93 percent of LDC imports. Japan believes that it must achieve a balance between the percentage of duty- or quota-free LDC products and Japan’s need to protect sensitive agricultural and fishery products. European Trade Commissioner Peter Mandelson lauded Japan’s initiative and urged the United States to make a commitment similar to the EU’s “Everything But Arms” (EBA) initiative where the EU provides duty-free and quota free access for all LDC imports, minus sugar, rice and bananas. Those products remain subject to tariffs and trade remedies actions.

Mandelson insisted, however, that the EU will not table a new agriculture offer or alter its current offer during the Ministerial. WTO Members – including the United States, Brazil and India – have criticized the EU agriculture proposal for its lack of ambition in market access,

sensitive products and tariff cuts. Mandelson also stated that the EU can only agree to an end date for export subsidies – the last significant obstacle to the completion of that agriculture negotiations “pillar” – if the United States and other WTO Members offer concessions on food aid and programs that distort export competition. Mandelson has criticized U.S. food aid as distorting trade and stated that “radical reform is an essential part of an agreement that would also eliminate export subsidies.”

### **Assistant USTRs Discuss U.S. Agenda for Hong Kong**

On December 13, 2005, the American Business Coalition for Doha (ABC Doha) held a briefing in Hong Kong with Assistant United States Trade Representatives (AUSTR) **Justin McCarthy** and **Dorothy Dwoskin**. The U.S. trade officials provided an overview of the week’s events and their outlook on the key negotiating areas during the World Trade Organization’s (WTO) Ministerial Conference.

**Dorothy Dwoskin, AUSTR for WTO**, stressed that the main task for the negotiators this week is to determine how to strengthen the Ministerial Declaration and Annex and noted that contrary to 2003 Cancun WTO Ministerial, trade facilitation is “the one area where developing and developed countries have come together with a working mandate for further negotiation.” Of the six reports attached to the draft ministerial declaration from the Chairs of the key negotiating groups, only the trade facilitation text was approved by WTO Members prior to the Hong Kong Ministerial. The respective chairs of the other sectors, including agriculture, non-agriculture market access (NAMA), services, rules, and special and differential treatment (SDT) for least-developed countries (LDCs), submitted draft texts, but WTO Members did not agree upon their contents. As a result, Dwoskin stated that the United States is “pushing” for a plan post-Hong Kong to complete working mandates for these areas by the end of 2006. She also acknowledged that, unlike the EU, the United States will continue urging Members to improve the draft text in NAMA, market access and agriculture while in Hong Kong.

With respect to the Development Package, Dwoskin noted that Zambia was leading the Least Developed Countries (LDC) Group with the goal of fleshing out the commitments agreed upon in 2001. Dwoskin opined that, compared to the EU and other Members, the United States is more forthcoming about its relationship with LDCs. Dwoskin also stated that although the United States supports assistance programs such as the African Growth and Opportunity Act (AGOA) and the Generalized System of Preferences (GSP), the primary gains from development come from changes to the core negotiating areas of agriculture, services and NAMA.

**Justin McCarthy, AUSTR for Intergovernmental Affairs and Public Liaison**, outlined the schedule the United States would follow during the course of the Ministerial:

- **December 12:** Meeting chaired by Hong Kong's Commerce, Industry and Technology Secretary John Tsang. Tsang appointed six other trade ministers as “facilitators” to help him with brokering compromise over the most contentious negotiating areas. USTR Rob Portman attended the meeting and met with each of these facilitators.

- **December 13:** Portman met with the Egyptian Minister regarding the needs of the Africa and LDC Groups and met with several Latin American ministers to follow up on the importance of moving the Doha agenda forward.
- **December 14:** The United States will meet with West African countries on the “Cotton Agenda” and will also meet with Honduras and other Latin American countries to discuss bananas.
- **December 15:** Tonga will most likely accede to the WTO and become its 150<sup>th</sup> Member. WTO Members will also review the December 11 conclusion of Saudi Arabia’s WTO membership.

### **USTR Outlines U.S. Goals for Hong Kong; Lamy Re-Iterates Importance of Ministerial**

United States Trade Representative (USTR) Rob Portman outlined the United States’ goals for progress during the December 13-18 World Trade Organization (WTO) Ministerial in Hong Kong. Speaking to the press on December 12<sup>th</sup>, Portman stated that the Ministerial should include an agreement on agriculture to ensure that “potential gains made through tariff cuts are not undermined by too many exemptions for sensitive products” and expressed his hope that the EU will “be able to move forward” on their agriculture proposal. On non-agricultural market access (NAMA), Portman stated that WTO Members should agree on the use of the “Swiss Formula” of tariff reduction, under which WTO Members would reduce higher tariffs by greater margins than lower tariffs. He added that Members should agree that the formula should include two coefficients – one for developed countries, one for developing countries – “which would be equal to the final ceilings on tariffs.” Portman also noted that members must agree to a new deadline to submit revised services offers and on a future meeting date to agree on specific negotiating modalities that will not be reached in Hong Kong. Portman and U.S. Secretary of Agriculture Mike Johanns expressed “guarded optimism” regarding Hong Kong Ministerial, referring to the meeting as a “necessary building block” for post-Ministerial progress in the Doha Round. Johanns also stated that the U.S. proposals “must be matched by ambition from other WTO Members.”

On agriculture, the EU has not responded to Portman’s hope that their proposal “be stretched” to accommodate the demands of other WTO Members. European Trade Commissioner Peter Mandelson has, however, stated that the EU will be willing to “flesh out” their proposal, but the EU weeks ago appeared unwilling to amend its current proposal, which many WTO Members, including the United States, India and Brazil, have roundly criticized as “underwhelming.”

WTO Director-General Pascal Lamy also issued a statement on December 12, 2005 that “the [Doha] Round must be completed on time, and must fulfill its promise of a cross-cutting developmental outcome” by the end of 2006. Lamy noted that the Draft Ministerial Text “has captured in greater precision” WTO Members’ pledges to dismantle internal and export subsidies

as well as cut industrial tariffs. Lamy also reiterated that “in the coming few days WTO Members will have to make important decisions, although not very final ones,” and that “Hong Kong is one of many steps along the road of a complex and lengthy negotiation.”

Lamy’s statements reflect the reality of the Hong Kong Ministerial: that WTO Members will be unable to meet their original goal of achieving full modalities in Hong Kong and have reduced their expectations to “making progress” to complete full modalities in early 2006. Given these realities, it is unlikely that the Ministerial’s results will match Portman and Johann’s lofty expectations. Nevertheless, U.S. trade officials’ continued pursuit of an ambitious outcome to the Ministerial indicates that the United States has not given up on the Doha round. However, if the current impasses in agriculture, NAMA, and services continue at the Ministerial and during the early months of 2006, the United States may abandon its lofty hopes for an ambitious multilateral agreement and focus instead on more achievable bilateral and regional free trade agreements.

### **U.S. Representatives Express Opposition to Russia’s WTO Accession Based on Its IPR Record**

On December 7, 2005, the U.S. House Judiciary Subcommittee on the Courts, Internet, and Intellectual Property held a hearing on China and Russia’s intellectual property rights (IPR) records. Several members of the House committee voiced their opposition to Russia’s accession to the World Trade Organization (WTO) because of its poor IPR record and added that Russia “should lose trade benefits under the Generalized System of Trade Preferences [GSP] program” until it strengthens its IPR monitoring and enforcement. Committee chairman Rep. Lamar Smith (R-TX) stated that he will continue to oppose Russia’s WTO accession “in the absence of a real, sustained, and verifiable commitment by the highest levels of the Russian government to protect the legitimate rights of intellectual property owners.” Representative Darrell Issa (R-CA) stated that he has “no intention of watching while Russia becomes the next China,” a reference to China’s IPR record and its accession to the WTO before making IPR reforms. In November, Rep. Issa introduced a non-binding House resolution (H. Con. Res. 230) that calls on the Russian government to provide greater IPR protections. The House passed the Resolution by a vote of 421 to 2; the Senate has not passed a similar resolution.

Witnesses at the hearing included Acting Assistant United States Trade Representative (AUSTR) for intellectual property Victoria Espinel who noted that “more progress needs to be made” on Russian IPR enforcement. She also stated that Russia has made small improvements, and that President Putin has included IPR on his agenda. On Russia’s role in the GSP program, Espinel stated that USTR was considering the petition to remove Russia from the program and would make a decision by June 2006. According to the International Intellectual Property Alliance (IIPA), Russia suffers from a “terrible copyright piracy rate second only to China.” According to IIPA, Russian piracy rates are close to 70 percent and cost U.S. companies close to \$2 billion per year.

Because the United States has not completed its bilateral accession negotiations with Russia, Congressional threats to block Russia’s WTO accession could carry some weight. On

the other hand, the advanced stage of the bilateral negotiations, and Russia's accession process in general, may limit the impact of such threats: the United States is one of only six countries yet to complete bilateral talks with Russia. Moreover, Congressional threats to block other countries' WTO accessions rarely cause major delays or changes in the final bilateral agreements. For Russia, the Bush Administration has indicated that IPR issues are much less of a sticking point in the stalled negotiations than airplane tariffs, access to financial services markets and non-tariff barriers to U.S. agricultural goods. Indeed, U.S. Ambassador to Russia William Burns stated December 8<sup>th</sup> that he was "encouraged by the concrete steps the Russian authorities are taking" to fight counterfeiting, and according to the Russian government, it has filed more than 5,000 criminal cases dealing with IPR violations since January 2005. The government also claims to have shut down twelve counterfeit CD and DVD operations and to have seized almost \$13.8 million in unlicensed merchandise.

The next round of U.S.-Russian negotiations is scheduled for next week, when Russian Economic Development and Trade Minister German Gref and USTR Rob Portman are set to meet in Hong Kong during the WTO's Ministerial Conference. Further conflict in the bilateral talks would likely push Russia's current goal of a mid-2006 accession into 2007. Although such conflict might well continue, it is unlikely that congressional threats on IPR will be the reason.

### **USTR Seeks Comments on WTO Panel on Turkey's Rice Import Requirements**

The United States Trade Representative (USTR) is seeking comments on the U.S. request for World Trade Organization (WTO) consultations with Turkey (WT/DS334/1) regarding its import licensing requirement and domestic purchasing requirement for rice imports. Comments should be submitted to USTR by January 1, 2006. The United States requested the establishment of a WTO panel regarding Turkey's import licensing regime and domestic purchase requirement on imports of rice on November 2, 2005.

Turkey's current rice import regime requires importers to possess an import license to import rice. According to the USTR, Turkey fails to grant these licenses at the bound duty rate for rice. USTR also alleges that Turkey maintains a tariff-rate quota for rice imports that requires importers to purchase specified quantities of domestic rice to import specified quantities of rice at reduced tariff levels. Importers must make these domestic rice purchases from the Turkish Grain Board, Turkish producers or producer associations. USTR claims that these measures are inconsistent with Turkey's WTO obligations under Article 2.1 of the WTO's Trade-Related Investment Measures (TRIMs) Agreement.

### **USTR Seeks Comments on Ecuadorian Shrimp Dumping**

The United States Trade Representative (USTR) announced that it seeks comments on Ecuador's request for World Trade Organization (WTO) consultations on the U.S. Department of Commerce's (DOC) final affirmative antidumping determination on frozen warmwater shrimp from Ecuador (WT/DS335/1). Comments should be submitted to USTR by January 1, 2006. Ecuador requested WTO consultations with the United States on November 17, 2005.



In its request for consultations, Ecuador alleges that DOC's use of "zeroing" in the underlying anti-dumping investigation violated the WTO's Anti-Dumping Agreement and resulted in artificial and inflated dumping margins where none would have existed otherwise.

The WTO Appellate Body has ruled that the use of zeroing in original investigations violates the Anti-Dumping Agreement. Two authoritative decisions on point – in *EC – Bed Linen* and *US – Lumber Dumping* – leave little doubt that zeroing in original investigations is WTO-inconsistent. Ecuador's request for consultations pertains only to DOC's use of zeroing in its anti-dumping investigation of certain frozen warmwater shrimp from Ecuador. During that investigation, DOC applied the same (WTO-inconsistent) zeroing methodology as it did in the anti-dumping investigation underlying *U.S. – Lumber Dumping*. It is, therefore, reasonable to assume that a *US – Shrimp AD Measures* Panel would find DOC's use of zeroing in the shrimp anti-dumping investigation to be inconsistent with the Anti-Dumping Agreement.

### **Lamy Issues Revisions to WTO Draft Text, Incorporates TRIPS Medicines Agreement**

World Trade Organization (WTO) Director-General Pascal Lamy on December 7, 2005 issued new amendments to the WTO Draft Ministerial Text. The amendments come days before the WTO's December 13-18 Hong Kong ministerial conference. The revisions incorporate three amendments approved by the General Council: (i) the addition of brackets in paragraph 21 on Services; (ii) the removal of brackets in paragraph 53 on the accession of Tonga; and (iii) the addition of some wording at the end of paragraph 34 on Trade-Related Aspects of Intellectual Property (TRIPS) and Public Health.

In the revised services text, WTO Members have agreed to "remove or substantially reduce exemptions from most-favored nation (MFN) treatment." The services text also urges Members to "achieve a progressively higher level of liberalization of trade in services, with appropriate flexibility for individual developing country Members" in all four services modes. On TRIPS and Public Health, the draft Ministerial text reflects the adoption of a December 6 agreement of the General Council that will "formally incorporate an August 2003 deal on access to essential medicines" into the TRIPS agreement. The agreement allows developing countries to issue "compulsory licenses" to override patent rights and import generic copies of medicines (as opposed to copyrighted brands) that address public health concerns including HIV/AIDS, malaria, and tuberculosis. Approval of the deal means that the issue will be removed from debate during the ministerial. Lamy stated that the agreement "confirms once again that members are determined to ensure the WTO's trading system contributes to humanitarian and development goals." United States Trade Representative (USTR) Rob Portman also commended the deal and stated that the "landmark achievement" would provide much-needed help to developing countries with public health problems. On accessions, the revised Ministerial text "notes with satisfaction that Tonga has completed its accession negotiations to the WTO."

Lamy stated that Hong Kong will serve as a "negotiating session," and that the meeting will be organized around a series of questions focusing on agriculture and nonagricultural market access (NAMA) that Lamy circulated to trade ministers in late November. Lamy also compared

the ministerial to a “big ship that needs to reach its final destination by the end of 2006” and expressed optimism that the meeting would push Doha Round developments forward.

U.S. Secretary of Agriculture Mike Johanns also expressed his optimism for the ministerial and stated that United States expects “significant progress” during the Hong Kong meetings. Johanns suggested that trade ministers “should be able to make enough progress so full modalities for the stalled trade negotiations can be reached by early [2006].” At the same forum, U.S. House Agriculture Committee Chairman Bob Goodlatte (R-VA) stated that the United States “should walk away from Doha negotiations if there is no breakthrough in Hong Kong.” Goodlatte further opined that the United States could achieve similar market access openings through its bilateral and plurilateral free trade agreements (FTAs), and that if WTO Members do not reach an agriculture agreement by 2007, the United States “should have a free hand” in writing a new Farm Bill. The current Farm Bill, which provides U.S. farmers with agriculture domestic support programs, is set to expire in September 2007.

Although many trade officials expressed guarded optimism for the ministerial, it is not expected that the Hong Kong meeting will result in any concrete gains, especially on contentious issues such as agriculture, services, and NAMA. Much like Johanns, the majority of these officials are already looking to a 2006 deadline for achieving modalities. Members of U.S. Congress, however, have publicly expressed their discouragement with the ministerial. Last week, several key Members of Congress scheduled to attend the ministerial cancelled their trip in order to conclude domestic legislative issues. Goodlatte’s thoughts echo those of many in Congress who see Hong Kong as little more than a “stock-taking” session. Johann’s comments, however, indicate that the Administration does not share such views, at least publicly. The Administration also does not share Goodlatte’s view that bilateral FTAs can provide gains equal to those from a comprehensive multilateral agreement, and for good reason: studies show that the benefits from an ambitious Doha round agreement would dwarf those of bilateral FTAs, especially for developing countries.

### **As Aircraft Subsidy Tensions Reemerge, U.S. and EU Join to Fight Intellectual Property Piracy**

Tensions between the United States and European Union over aircraft subsidies are flaring once again as the two sides prepare for the December 13-18 World Trade Organization ministerial in Hong Kong. Sources indicate that the “rhetoric has become more harsh” between the United States and the EU regarding their dispute over the payment of government subsidies to the U.S. aircraft-manufacturer Boeing Company and its European rival, Airbus. Both the United States and the EU have filed competing complaints with the World Trade Organization (WTO) that the two companies each receive illegal government assistance. In early 2005, the U.S. House of Representatives voted to bar Pentagon contracts with Airbus because of the ongoing trade tensions. The United States’ complaint focuses on the EU’s “launch aid” program under which European governments cover startup costs for Airbus’ new aircrafts; Airbus does not repay these “loans” unless the plane is a success. The EU contends that Boeing receives preferential tax breaks and similar “launch aid” from the U.S. military and Japan, especially for Boeing’s 787 Dreamliner that competes against Airbus’ A-350.

Since their initiation of WTO dispute settlement actions, U.S. and EU officials have entered into formal consultations in an attempt to resolve the issue without resorting to WTO panel proceedings, which could cost both sides billions of dollars. Although both United States Trade Representative (USTR) Rob Portman and EU Trade Commissioner Mandelson have repeatedly stated that they would like to end the conflict “amicably,” sources state that both sides have adopted more defensive postures making it more likely that the issue will continue for several months and may result in the establishment of a WTO dispute settlement panel to resolve the issue.

Meanwhile, the United States and the EU on November 30<sup>th</sup> pledged to wage a joint effort to combat intellectual property piracy theft through information sharing and analysis. The parties will establish a working group to begin meeting in January 2006 that is expected to produce an intellectual property right (IPR) enforcement strategy that will be finalized at the 2006 United States-EU summit. U.S. Secretary of Commerce Carlos Gutierrez stated that IP piracy costs the United States and the EU roughly \$400 million annually, and that counterfeiting “affects some 800,000 jobs.” European Trade Commissioner Peter Mandelson agreed and stated that the United States and the EU “are also sending a message to the rest of the world that we now have a position of zero tolerance on piracy” and that “others need to change their behavior.”

The reemergence of the aircraft subsidy issue comes at an inopportune time, as WTO Members enter final preparations for a Hong Kong ministerial facing already-diminished expectations. The United States and the EU’s ability to forge an IPR agreement indicates that the sides can come together when domestic interests coincide. It is unclear, however, whether the renewed tensions over aircraft subsidies will further hinder multilateral negotiations in which the two sides’ interests are frequently at odds.

### **USTR Sets First Deadline for Concluding Agricultural Export Subsidies’ Negotiations**

United States Trade Representative (USTR) Rob Portman has stated that World Trade Organization (WTO) Members will attempt to conclude negotiations on ending agricultural export subsidies as part of the Doha Development Agenda (DDA) by March 1, 2006. Portman stated that Members would also work to conclude negotiations on state trading enterprises, food aid, and export credits by this date. Portman announced the date on December 3<sup>rd</sup> at a joint press conference on trade talks with senior negotiating officials from the United States, the EU, India, Brazil, Japan, and Australia in Geneva, Switzerland. The officials met to discuss the current status of Doha Round negotiations and the December 13-18 WTO ministerial in Hong Kong.

Although WTO trade officials originally envisaged the Hong Kong Ministerial as the deadline for the achievement of full modalities in all negotiating areas, contentious issues such as agricultural market access have delayed the agreements’ completion indefinitely. Portman’s March 1<sup>st</sup> deadline, despite its informality, may represent a small step forward, as it is the first announced date for the conclusion of any aspect of the final agreement. Whether the United States and its fellow WTO Members announced the date to motivate other WTO Members or whether the date is a true deadline remains to be seen. Furthermore, agricultural export subsidies

are the agriculture negotiations' least contentious pillar. It thus appears unlikely that WTO members will achieve modalities on market access and domestic support pillars before March 1, 2006, leaving precious little time to complete the overall agreement by the end of 2006.

### **Congressional Members Cancel Trip to Hong Kong as Lamy Urges Negotiators to "Re-Double" Efforts for Upcoming Ministerial**

Members of Congress have cancelled their trips to Hong Kong for the World Trade Organization's (WTO) ministerial from December 13-18, 2005 in order to conduct Congressional business in Washington, DC. Several Members of Congress, including Senate Finance Committee Chairman Charles Grassley (R-IA) and Senate Agriculture Committee Chairman Saxby Chambliss (R-GA), had earlier planned to serve in a Congressional delegation to Hong Kong to observe the ministerial first-hand. House and Senate leadership, however, announced that both chambers would be in session during the same time period as the WTO meetings. Consequently, several Senators and Representatives planning on attending the WTO meetings cancelled their trips so that they would be available to cast votes while Congress was in session. House Agriculture Committee Chairman Bob Goodlatte (R-VA) also cancelled his trip. Although driven by Congressional business, the absence of a Congressional delegation at the WTO ministerial may send a disheartening message to other delegations that Congress believes little will be achieved in Hong Kong.

Meanwhile, WTO Director-General Pascal Lamy circulated a revised version of the Draft Ministerial Text on November 30<sup>th</sup>. Lamy presented an initial draft of the text on November 29<sup>th</sup>. He also urged all delegations to "exercise good will and re-double their efforts in order to find all possible convergence" in the short amount of time before the ministerial. Lamy noted, however, that many negotiating areas "lacked convergence" and offered "no visible prospect of moving forward on these issues." He stated that any revisions to the Draft Ministerial Text "reflect only rather non-controversial issues and will try to capture the current situation in the negotiations that will have to take place in Hong Kong." Officials from different delegations, however, see little progress in improving the text and have criticized Lamy for not presenting a text that offers them proper guidance on how to conduct high-level talks during the WTO ministerial. Officials seem to all agree that the most contentious issues preventing convergence are: (i) the use of a harmonizing "Swiss" formula for reducing tariffs on industrial goods; (ii) agricultural market access; and (iii) a decision on the end-date for the elimination of export subsidies. Sources note, however, WTO Members are showing convergence on some issues including the number of bands in the formulas for reducing agricultural tariffs and subsidies, the "idea that tariff cuts should be progressive," and the idea that the EU should make the largest cuts in farm subsidies and domestic support. Overall, prospects for "success" at the ministerial in Hong Kong keep lowering as the December meeting approaches. As Lamy stated in the new draft, "much remains to be done in order to establish modalities and conclude negotiations."

## **Key Members of Congress Voice Reservations with WTO Antidumping Negotiations**

U.S. House Ways and Means Ranking Democrat Charles Rangel (D-NY) and Ways and Means Trade Subcommittee Ranking Democrat Ben Cardin (D-MD) have called on U.S. trade negotiators to reject the proposed World Trade Organization (WTO) antidumping text. In a November 22<sup>nd</sup> letter to United States Trade Representative (USTR) Rob Portman, both Representatives stated that the draft text contains numerous flaws and "opens the door to a broad renegotiations of the WTO Antidumping Agreement." The letter also noted that the United States lacked "an effective negotiating strategy" and urged Portman to meet with members of Congress to create a plan of action that will ensure a successful outcome at the December WTO ministerial in Hong Kong.

Also in response to the proposed WTO antidumping text, Representative Phil English (R-PA) introduced H. Res. 577 on November 22<sup>nd</sup> that recommends that U.S. negotiators not "weaken" U.S. trade remedy laws during the WTO's Doha negotiating round. English stated that he "will carefully monitor the progress of the Doha Round to ensure that we do not resign ourselves to agreements that would in any way impede American producers from policing the domestic market." The Senate recently passed a similar resolution, S. Con. Res. 55, sponsored by Senators Larry Craig (R-ID) and Jay Rockefeller (D-WV).

Although the resolutions are non-binding, they reflect Congress' keen interest in monitoring U.S. involvement in the Doha Round and indicate that Congress will closely observe U.S. trade negotiators' actions during the Hong Kong ministerial. As with Rangel and Cardin's letter, USTR will likely take the resolutions under advisement but will not substantively alter its negotiating positions.

## **WTO Negotiating Group Chairs Circulate Drafts on Negotiations Progress; Lamy Issues Draft Ministerial Text**

The chairmen of the World Trade Organization's (WTO) negotiating groups on non-agriculture market access (NAMA), agriculture, services, rules and trade facilitation circulated to the WTO delegations the most recent draft texts for their respective sectors. The agriculture and NAMA drafts were merely status reports instead of true negotiating drafts, and neither provided solutions for overcoming current differences. Both reports noted, however, that WTO Members must find solutions themselves and "not through a prescriptive text from the chairmen." The chairmen have sent the reports to the WTO's Trade Negotiating Committee (TNC), which has incorporated the texts into the first draft ministerial declaration for the December WTO ministerial in Hong Kong. Director-General Pascal Lamy introduced the Draft Ministerial Text for the ministerial conference on November 26, 2005. The declaration text will serve as the basis for discussions during the December 13-18 ministerial:

- **NAMA Draft.** NAMA negotiating group chairman Stefan Johannesson stated that "the establishment of full modalities is, at present, a difficult prospect given the lack of agreement on a number of elements in the NAMA

framework” and added that this lack of progress was “troubling.” Johannesson noted that Members agree that the “Swiss formula” should serve as the means to determine tariff cuts but added that Members disagree on the formula’s usage. Several Members support a formula with a limited number of negotiated coefficients, but others support a formula where the value of each country’s coefficient would be based on the tariff average of bound rates. Members also disagree on the amount of coefficient flexibility that the final formula should afford developing countries. Johannesson stated that “some Members have [also] stressed that their unbound tariff lines with high applied rates are also sensitive and due consideration should be given to those lines.”

- **Agriculture Draft.** Agriculture negotiating group chairman Crawford Falconer stated that “full modalities will not be achieved at Hong Kong,” and that current negotiations are a “task postponed.” He also noted that there is a “compelling urgency of seizing the moment and driving the process to a conclusion as rapidly as possible.” Regarding the agriculture text, Falconer stated that “there is a working hypothesis” of three bands for developed countries’ overall cuts:

Bands	Thresholds (US\$ billion)	Cuts
1	0-10	31%-70%
2	10-60	53%-75%
3	> 60	70%-80%

Under this framework, the EU would fall in the first band and the United States and Japan in the second band. Falconer also stated that there is a “zone of engagement” for *de minimis* cuts between 50-80 percent for developed countries, but figures for developing countries remain under debate. On “Blue Box” subsidies (*i.e.* distorting domestic supports that also require farmers to limit production), two proposals are under consideration: (i) to shrink the current 5 percent ceiling to 2.5 percent; or (ii) to impose additional criteria to discipline the “new” Blue Box. Falconer also noted that Members have achieved considerable convergence on adopting a linear-based approach for cuts within the bands of a tiered formula with regards to market access but that “major gaps must be bridged” especially on sensitive products and tariff caps.

- **Services Draft.** The services draft calls on Members to make the following commitments: (i) remove existing commercial presence requirements from Mode 1 (“cross-border supply”) commitments; (ii) remove economics needs tests from Mode 3 (“commercial presence”) and Mode 4 (“presence of natural persons”) commitments (iii) remove exemptions from most-favored nation (MFN) treatment; and (iv) intensify and expedite the request-offer negotiations and plurilateral approaches. The revised services text also

eliminated the numerical targets on services liberalization that were originally included in the draft text.

- **Rules Draft.** The rules draft text calls on WTO Members to “avoid unwarranted use of anti-dumping (AD) measures” and “to consider that [rules] negotiations on anti-dumping should clarify and improve the rules regarding determinations of dumping, injury and causation, and the application of measures.” The text also calls for intense and accelerated negotiations to complete the process as quickly as possible.
- **Trade Facilitation Draft.** The trade facilitation (TF) draft text stated that “work needs to continue and broaden on the process of identifying individual Member’s trade facilitation needs and priorities” and affirmed developed countries’ commitments to provide technical assistance and capacity building to developing countries.

Although several draft texts reflected the lowered expectations of negotiation chairs, the texts all included language to the effect that Members would work with the proposals at hand and make the best of the situation for the WTO’s Hong Kong ministerial. While “many gaps still must be bridged” – especially on agriculture market access and NAMA – WTO Members will make a concerted effort to advance negotiations following Hong Kong to complete the Doha Development Round by the end of 2006. It is likely that Hong Kong, however, will achieve very little as all texts noted that the failure to reach modalities in time for the ministerial was “troublesome.”