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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

Panel Debates Renewal of Trade Promotion Authority; Extension Assured but Controversy Persists Given Nature of Trade Agreements

On May 12, 2005, The Association of Women in International Trade (WIIT) hosted a panel discussion on the extension of the Trade Promotion Authority Act of 2002 (TPA) and Congressional consideration of free trade agreements, including the Dominican Republic-Central America Free Trade Agreement (CAFTA), and the Doha Development Agenda of the World Trade Organization (WTO). Discussants included representatives from the business community and staff members from parties of the U.S. Senate.

House Rejects Resolution To Withdraw US From WTO

On June 9, 2005, the U.S. House of Representatives rejected a joint resolution that would withdraw U.S. support for membership in the World Trade Organization (WTO). Representative Bernard Sanders (I-Vermont) had introduced the disapproval resolution (H.J. Res. 27) on March 2, 2005, in the context of the analysis of the costs and benefits of WTO membership that, in accordance with U.S. law, the Administration must send to Congress every five years. The defeat of the joint resolution ends discussion as part of this cycle's review, and the Senate will not act.

Free Trade Agreements

DR-CAFTA Survives Senate Finance And House Ways And Means Committee Mock Markups

On June 14, 2005, the Senate Finance Committee in a mock markup approved the implementing legislation for the US-Dominican Republic-Central America FTA (DR-CAFTA) by a vote of 11-9. On June 15, 2005, the House Ways and Means Committee in its mock markup approved the implementing legislation by a vote of 25-16.

With the mock markup process now complete, the Administration will need to submit its final version of the implementing legislation to Congress. Upon submission of the final text, Congress will have 90-days to complete its consideration. Administration officials have not said when they will submit the final text, although United States Trade Representative (USTR) Rob Portman remains hopeful Congress will approve the agreement before the July 4th recess.

Legislative Outlook for DR-CAFTA Remains Uncertain As USTR Portman Offers To Enhance Resources For Labor Enforcement

We want to alert you to the following recent developments with regard to the United States-Dominican Republic-Central America Free Trade Agreement (DR-CAFTA):

- On June 9, 2005, in a speech before the Hispanic Alliance for Free Trade, United States Trade Representative (USTR) Rob Portman offered to appropriate additional resources to enhance labor law enforcement in the DR-CAFTA countries. However, the offer drew quick criticism from leading Congressional Democrats.
- On June 8, 2005, the Washington International Trade Association (WITA) organized a discussion on DR-CAFTA between Congressmen Kevin Brady (R-Texas), who supports the agreement, and Xavier Becerra (D-California), who opposes it. The debate focused on reoccurring themes such as market access for U.S. producers, and labor standards.
- President George W. Bush continues to increase his profile in the debate over DR-CAFTA, urging a quick Congressional approval of the agreement (i) in his weekly radio address on June 4, (ii) at a meeting of the General Assembly of the Organization of American States (OAS) on June 6, and (ii) in a meeting with senior Members of Congress on June 9, 2005.

U.S.-Andean FTA: Progress Achieved as Certain Issues Near Conclusion in Tenth Round of Negotiations

Trade negotiators from the United States, Colombia, Peru and Ecuador achieved progress in the tenth round talks to establish the U.S.-Andean FTA, held June 5-10, 2005 in Guayaquil, Ecuador. Prior to the latest round, it was uncertain whether Ecuador would host or even continue to participate in the FTA talks after the ouster of its President. It appears, however, that the new leadership in Ecuador is willing to engage in FTA talks. While the President, Alfredo Palacios, did not attend the inauguration, he sent his full ministerial cabinet and spent over three hours the day before with the heads of negotiation for Colombia, Peru and U.S. – assuring the continued support of his government.

Negotiators have reached agreement on certain chapters including technical cooperation and electronic commerce. Other issues that are close to conclusion include non-tariff barriers, competition policy, customs and safeguards, cross-border services, financial services, telecommunications and government procurement. In addition, negotiators made progress on certain copyright provisions important to the Andean countries, investment, rules of origin, labor and textile provisions.

Among the outstanding issues, agriculture, intellectual property (such as data protection, patents and biodiversity), and sanitary and phytosanitary measures remain as particularly sensitive areas. Nevertheless, the Andean countries obtained zero tariff commitments in pouched tuna, but the U.S. has delayed negotiations on canned tuna until the last round.

Negotiations are expected to continue until at least September, with the most contentious issues such as agriculture and certain intellectual property to be dealt with at the end. The next round of talks will be held in Miami, Florida from the July 18-22, 2005, with additional rounds of bilateral negotiations on agriculture in the interim.

US Aims to Complete MEFTA by 2013; Progress May Hinge on Ratification of DR-CAFTA and Human Rights Concerns in Some GCC Countries

Indications are that the US is “well on its way” toward establishing a Middle East Free Trade Area (MEFTA) by 2013. This initiative contemplates using the U.S. Free Trade Agreements (FTAs) with Israel and Jordan and the recently concluded FTAs with Morocco and Bahrain as anchors to negotiate FTAs with other Middle Eastern countries. At some point before 2013, the U.S. intends to consolidate these FTAs to form the MEFTA.

FTA Highlights

We want to alert you to the following FTA developments:

- President Bush And Prime Minister Of Egypt Have “Very Good Discussion” On Possible US-Egypt FTA
- US And Indonesia Resume Talks Under TIFA
- ITC Releases Study Of Impact Of U.S. FTAs With Chile, Singapore, And Australia
- USTR Portman Says Korea Needs To Lift Ban On U.S. Beef And Reduce Screen Quota Against U.S. Films Before FTA is Possible
- President Bush And South African President Mbeki Pledge To Intensify Efforts To Conclude US-SACU FTA

US-European Union

European Commission Proposes Joint EU-US Strategy To Strengthen Transatlantic Partnership

On May 18, 2005, the European Commission adopted a Communication outlining proposals for a joint EU-US strategy to reinvigorate the Transatlantic Relationship and establish a stronger EU-US Partnership. The Commission proposes to increase economic integration between the parties by improving (i) regulatory cooperation, (ii) promotion of innovation, and (iii) border arrangements. The Communication also contains numerous ideas for strengthening the political framework of the Transatlantic Partnership. It does not touch, however, on the issue of a potential Transatlantic Free Trade Agreement (FTA) between the EU and the US.

The EU and the US discussed the Communication further at the upcoming EU-US Summit on June 20, 2005, and the Commission had proposed that on this occasion both parties would give senior officials the task of developing the proposals into a more concrete project. *(A full report on the outcome of the Summit is currently being prepared and will be included in our next Monthly Report)* Sources indicate that the EU hopes to have this project ready and to sign a formal agreement by the 2006 Summit in Austria.

US And EU Request Establishment Of WTO Dispute Settlement Panels To Resolve Dispute On Subsidization Of Airbus And Boeing

On May 31, 2005, the United States requested the establishment of a World Trade Organization (WTO) dispute settlement panel to resolve the ongoing dispute with the European Union over European governments' alleged unfair subsidization of Airbus. In an immediate countermove, the EU later the same day requested the establishment of a WTO dispute settlement panel to rule on the US government's alleged unfair subsidies to Boeing.

The parties decided to return to the WTO after they failed to negotiate a solution to the dispute. United States Trade Representative (USTR) Rob Portman said the US action resulted from the EU's refusal to abide by the terms of holding off on launch aid to Airbus while negotiating the immediate elimination of all subsidies. In response, EU Trade Commissioner Mandelson said the negotiations had failed because the US demanded the immediate elimination of all subsidies to Airbus as a prior condition, without offering a commensurate balancing package with regard to its subsidies to Boeing.

At a meeting of the WTO Dispute Settlement Body (DSB) On June 13, 2005, the EU and the US exercised their right to block each other's requests. Establishment of the panels will now be virtually automatic at the next DSB meeting, which will take place on June 20, 2005. Under the WTO dispute settlement procedures, the actual litigation could then take up to three years.

OECD Publishes Study On Impact Of Possible EU And US Reforms To Reduce Barriers To Transatlantic Trade

On May 26, 2005, the Organization for Economic Cooperation and Development (OECD) published a study on the possible impact of a package of structural reforms in the European Union and the United States on trade and the resulting benefits for the OECD countries. In particular, the reforms aim to reduce (i) competition-restraining regulations, (ii) barriers to foreign direct investments (FDI), and (iii) tariffs for agricultural and non-agricultural products to "best practice"- levels.

The study concludes that the measures, and particularly the reforms that allow greater competition, could result in per capita GDP increases in the EU and the US, as well as in other OECD countries. However, since there is more need to ease the competition restrictions in the EU than in the US, the economic benefits of the reforms would be greater in Europe.

US-Latin America

NAFTA

Senior North American Officials and Business Leaders Discuss the Future of Regional Integration at "Hemispheria 2005 Summit"

On May 12 and 13, 2005, senior government officials and entrepreneurs from Mexico, Canada and the United States gathered at the "Hemispheria 2005 Summit", in San Pedro Garza Garcia, Nuevo Leon, Mexico. The two-day event aimed to discuss a common agenda

to further regional integration, energy supply responsibility and improving competitiveness among NAFTA partners.

The event resulted in a joint declaration called “The San Pedro Declaration” which will be delivered to North American governments and legislative bodies to consider when implementing further policies affecting the North America region.

Multilateral

Panel Rules U.S. “Sunset Policy Bulletin” Illegal Under WTO

On June 20, 2005, a WTO Panel released a decision in *United States - Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico* (DS282), ruling that the U.S. “Sunset Policy Bulletin”, which preordains when the U.S. Department of Commerce will find “likely dumping,” violates U.S. obligations under the WTO Anti-Dumping Agreement. In a challenge brought by Mexico, the Panel found that the Bulletin established an “irrebuttable presumption” of likely dumping, contrary to the obligation to ensure a “sufficient factual basis” to extend anti-dumping orders. The Panel also found that the determination of the DOC in this case was WTO-inconsistent as applied, because it was “not supported by reasoned and adequate conclusions.” However, the Panel dismissed Mexico’s claims related to the determination of likely injury, and Mexico’s claims regarding Commerce’s “revocation review.”

Pascal Lamy Appointed as Next WTO Director General; Paris Mini-Ministerial Meeting Reaches Agreement on Key Agriculture Formulae

The WTO General Council on May 26, 2005, approved former EU Trade Commissioner Pascal Lamy as the next WTO Director-General. Lamy will take office on September 1.

On May 3-4, 2005, ministers and senior trade officials from about 30 WTO Members gathered at a ‘mini-ministerial’ conference in Paris, France in an effort to move negotiations forward on the Doha Round. Participants reached a critical agreement on agriculture tariff formulae, which should help to clear the way for progress in other negotiations including non-agricultural market access (“NAMA”), services, trade facilitation and other issues.

REPORTS IN DETAIL

UNITED STATES

Panel Debates Renewal of Trade Promotion Authority; Extension Assured but Controversy Persists Given Nature of Trade Agreements

SUMMARY

On May 12, 2005, The Association of Women in International Trade (WIIT) hosted a panel discussion on the extension of the Trade Promotion Authority Act of 2002 (TPA) and Congressional consideration of free trade agreements, including the Dominican Republic-Central America Free Trade Agreement (CAFTA), and the Doha Development Agenda of the World Trade Organization (WTO). Discussants included representatives from the business community and staff members from parties of the U.S. Senate.

ANALYSIS

I. Debate Over Trade Promotion Authority

A. Constitutional Importance of TPA

Ms. Linda Minghetti, Vice President, Emergency Committee for American Trade stressed the constitutional importance of TPA, which resolves overlaps in authority between Congressional power over foreign commerce and Presidential power to conduct foreign affairs. Extending TPA to 2007 would help facilitate weekly international trade consultations between Congress and the Administration, maintain regular reporting by the Executive to Congress, and enable the President to move forward with free trade agreement (FTA) and Doha Round negotiations.

B. TPA Effects on Trade Imbalances

Ms. Kathleen Hatfield, Chief Trade and Judiciary Counsel for Senator **Robert Byrd** (D-West Virginia) argued that with Congress and the White House controlled by the Republican Party, consultations between the executive and legislative branches lacked meaning. Hatfield asserted that TPA favors corporations and offshoring at the expense of labor interests. While TPA has promoted FTA negotiations with several trading partners, Ms. Hatfield observed that NAFTA has resulted in expanding U.S. trade deficits with its neighbors. Moreover, she argued that deficits with DR-CAFTA and Free Trade Area of the Americas (FTAA) countries may continue to expand if these agreements are ratified.

C. Leveling the Playing Field

Mr. Everett Eisenstat, Chief International Trade Counsel, Senate Finance Committee observed that for the weekly informal consultation meetings held every Friday morning, Congressional members and staff often do not attend, and most of the people not in attendance are Democrats. He touted the extension of TPA as a historical opportunity for the US to level the playing field with reductions in tariffs and non-tariff barriers (NTBs) through FTAs and Doha Round negotiations, and for the US to continue in its role as a global economic leader.

II. Audience Discussion

A. Need to Improve Trade Adjustment Assistance

In response to a question about trade adjustment assistance (TAA) for workers under TPA and FTAs, Mr. Eisenstat agreed that TAA needs improvement, and the issue should be explored. Mr. Eisenstat cited the isolated yet open and thriving New Zealand economy as an example of a nimble, agile and entrepreneurial workforce that the US should emulate. Ms. Hatfield responded by framing TAA as a bigger issue, especially as outsourcing causes cutbacks in labor benefits.

B. Implications of DR-CAFTA Passage/Failure

In response to a question on the importance of DR-CAFTA to the overall U.S. trade agenda, Ms. Minghetti observed that passage of DR-CAFTA would reinforce the democratic progress in the region and would allow all parties to accrue benefits. Ms. Minghetti added that that labor reforms adopted in DR-CAFTA countries have been stronger than those adopted by Jordan; a country given a passing grade on labor standards by the AFL-CIO. Ms. Hatfield objected to DR-CAFTA, asserting that the agreement will not benefit the US and is deficient in the areas of labor, textiles and sugar.

Mr. Eisenstat sees CAFTA and other FTAs as vehicles to promote economic growth and competition in both the US and its trading partners.

OUTLOOK

On April 6, 2005, Senator Byrd and Senator **Byron Dorgan** (D-North Dakota) introduced a resolution to disapprove extension of Trade Promotion Authority (TPA) (S.Res.100). Despite some support in both the House and Senate, the resolution of disapproval is not expected to move beyond committee consideration. The Senate Finance and House Ways and Means Committees are both expected to terminate consideration of TPA disapproval before it reaches a full Senate or House vote (only the passage of the resolution by either the House or Senate would end TPA extension this year). In fact, the Chairmen of both Congressional committees have vowed to keep any resolutions of disapproval bottled up in committee. Thus, TPA extension is all but assured until 2007 – although the debate over TPA remains contentious given the controversy over DR-CAFTA and other trade initiatives.

House Rejects Resolution To Withdraw US From WTO

SUMMARY

On June 9, 2005, the U.S. House of Representatives rejected a joint resolution that would withdraw U.S. support for membership in the World Trade Organization (WTO). Representative Bernard Sanders (I-Vermont) had introduced the disapproval resolution (H.J. Res. 27) on March 2, 2005, in the context of the analysis of the costs and benefits of WTO membership that, in accordance with U.S. law, the Administration must send to Congress every five years. The defeat of the joint resolution ends discussion as part of this cycle's review, and the Senate will not act.

ANALYSIS

On June 9, 2005, the U.S. House of Representatives voted 338-86 to reject a joint resolution that would withdraw U.S. support for membership in the World Trade Organization (WTO). Representative Bernard Sanders (I-Vermont) introduced the disapproval resolution (H.J. Res. 27) on March 2, 2005, in the context of the U.S. review of WTO membership every five years. The defeat of the joint resolution in the House ends discussion as part of this cycle's review, and the Senate will not act.

Supporters of the resolution argued that the WTO frequently rules against U.S. interests, and asserted that WTO membership, and free trade in general, harm American workers. Opponents including House Ways and Means Chairman Bill Thomas (R-California) warned "that for the United States to walk away unilaterally from what is the best historical example of nations dealing economically in a meaningful and useful way makes no sense whatsoever."

United States Trade Representative (USTR) Rob Portman stated that "today's vote by the House of Representatives sends a strong message that the United States will continue to lead in the WTO." He also commented that the vote is a good indicator of Congressional support for trade and improves the prospects for passing the US-Central America-Dominican Republic Free Trade Agreement ("CAFTA-DR").

OUTLOOK

In accordance with U.S. law (19 USC 1235), the Administration must send a report to Congress every five years that includes an analysis of the costs and benefits of WTO membership. Within 90 days of Congress' receipt of the report, any Member may introduce a non-amendable joint resolution that withdraws Congress' approval of U.S. WTO membership. Congress last voted on U.S. WTO membership on June 21, 2000. It is worth noting that the resolution gained fewer supporters in 2000 than it did in 2005; in 2000, the resolution failed in the House by a vote of 56-363 as opposed to 86-338 this year.

Free Trade Agreements

DR-CAFTA Survives Senate Finance And House Ways And Means Committee Mock Markups

SUMMARY

On June 14, 2005, the Senate Finance Committee in a mock markup approved the implementing legislation for the US-Dominican Republic-Central America FTA (DR-CAFTA) by a vote of 11-9. On June 15, 2005, the House Ways and Means Committee in its mock markup approved the implementing legislation by a vote of 25-16.

With the mock markup process now complete, the Administration will need to submit its final version of the implementing legislation to Congress. Upon submission of the final text, Congress will have 90-days to complete its consideration. Administration officials have not said when they will submit the final text, although United States Trade Representative (USTR) Rob Portman remains hopeful Congress will approve the agreement before the July 4th recess.

ANALYSIS

I. DR-CAFTA Survives Senate Finance Mock Markup

On June 14, 2005, the Senate Finance Committee in a mock markup approved the implementing legislation for the US-Dominican Republic-Central America FTA (DR-CAFTA) by a vote of 11-9. Long anticipated to be contentious, the markup was devoid of major controversy with no amendments related to sugar being offered. The Finance Committee did adopt an amendment offered by Senator Ron Wyden (D-Oregon) that would extend trade adjustment assistance to service workers.

Two Democrats, Senators Blanche Lincoln (D-Arkansas) and Wyden, joined Committee Republicans supporting the accord. Republican Senators Olympia Snowe (R-Maine) and Michael Crapo (R-Idaho) voted against. Senator Craig Thomas (R-Wyoming), considered an important swing vote, voted in favor during the mock markup, but indicated that he will likely vote against the accord when it is considered on the Senate floor. Thomas remains concerned about the agreement's potential negative impact on the sugar industry.

II. DR-CAFTA Clears House Ways And Means Mock Markup

On June 15, 2005, the House Ways and Means Committee in its mock markup approved the implementing legislation by a vote of 25-16. During consideration of the draft legislation, Republicans on the Committee were able to hold at bay Democrat amendments related to labor. As with the Senate Finance mock markup, no amendments related to sugar were offered.

While the Committee declined to accept any amendments offered by Democrats, two amendments introduced through a substitute bill were adopted. The substitute draft, introduced by Chairman Bill Thomas (R-California), includes language that would require the President to report to Congress on the status of labor rights in DR-CAFTA countries, as well as the effect of the agreement on service workers.

Two Democrats, Representatives John Tanner (D-Tennessee) and William Jefferson (D-Louisiana) joined Republicans in supporting the accord. Republican Representative Phil English (R-Pennsylvania) voted against the agreement, citing concerns over Congress' lack of action with respect to China.

OUTLOOK

With the mock markup process now complete, the Administration will need to submit its final version of the DR-CAFTA implementing legislation to Congress. Upon submission of the final text, Congress will have 90-days to complete its consideration. Administration officials have not said when they will submit the final text, though United States Trade Representative (USTR) Rob Portman remains hopeful Congress will approve the agreement before the July 4th recess.

Legislative Outlook for DR-CAFTA Remains Uncertain As USTR Portman Offers To Enhance Resources For Labor Enforcement

SUMMARY

We want to alert you to the following recent developments with regard to the United States-Dominican Republic-Central America Free Trade Agreement (DR-CAFTA):

- On June 9, 2005, in a speech before the Hispanic Alliance for Free Trade, United States Trade Representative (USTR) Rob Portman offered to appropriate additional resources to enhance labor law enforcement in the DR-CAFTA countries. However, the offer drew quick criticism from leading Congressional Democrats.
- On June 8, 2005, the Washington International Trade Association (WITA) organized a discussion on DR-CAFTA between Congressmen Kevin Brady (R-Texas), who supports the agreement, and Xavier Becerra (D-California), who opposes it. The debate focused on reoccurring themes such as market access for U.S. producers, and labor standards.
- President George W. Bush continues to increase his profile in the debate over DR-CAFTA, urging a quick Congressional approval of the agreement (i) in his weekly radio address on June 4, (ii) at a meeting of the General Assembly of the Organization of American States (OAS) on June 6, and (ii) in a meeting with senior Members of Congress on June 9, 2005.

ANALYSIS

I. USTR Portman Offers Added Resources On Labor Enforcement In DR-CAFTA Countries, Draws Quick Rebuke from Senior Democrats

In a bid to shore up support for DR-CAFTA, United States Trade Representative (USTR) Rob Portman on June 9, 2005, in a speech before the Hispanic Alliance for Free Trade vowed to work with multilateral lending institutions and the U.S. Congress to appropriate additional resources to aid the DR-CAFTA countries to enhance labor law enforcement. Additionally, Portman pledged to work with Congress to develop performance benchmarks to gauge on-going progress on labor law enforcement.

Portman's offer drew quick criticism from leading Congressional Democrats. In a statement, Congressman Sander Levin (D-Michigan) asserted that labor laws in Central America remain weak, and that the FTA with the region should be renegotiated to include core International Labor Organization (ILO) standards. Levin's statement also criticized the labor provisions of the agreement as failing to provide adequate enforcement against countries violating core labor standards.

In his own statement, House Ways and Means Committee Ranking Democrat Charles Rangel (D-New York) reiterated his view that the Bush administration has failed to

adequately consult with Congressional Democrats on DR-CAFTA. He declared the agreement unacceptable in its present form.

II. WITA Panel Highlights Partisan Differences on DR-CAFTA

On June 8, 2005, the Washington International Trade Association (WITA) held its third in a series of DR-CAFTA discussions. The event featured a debate between pro-DR-CAFTA Congressman Kevin Brady (R-Texas) and DR-CAFTA opponent Congressman Xavier Becerra (D-California). The debate focused on reoccurring themes such as market access for U.S. producers, and labor standards.

Congressman Becerra expressed disappointment with DR-CAFTA, and argued that minor modifications would earn the support of House Democrats. Becerra, who has voted for previous FTAs, focused his remarks on the issue of labor standards, stating that changes to the region's labor laws would be needed in order to make DR-CAFTA acceptable. His suggestions for changes include:

- Enshrining in the text of DR-CAFTA an obligation to comply with international labor standards, rather than simply allowing countries to "enforce their own laws";
- Adding the five core international labor standards into the text of the agreement, including provisions against discrimination, forced labor, and child labor; and
- Requiring DR-CAFTA countries to adopt domestic criminal statutes to facilitate prosecution of labor law violations.

Becerra concluded that the U.S. is in a strong position to request such changes. With the DR-CAFTA countries having invested so much into the agreement, they would be willing to take further steps with respect to labor. He added that more resources to enhance labor law enforcement would in insufficient to gain his support.

Congressman Brady highlighted the benefits that would accrue to U.S. industry upon passage of the DR-CAFTA. The agreement would enhance the competitiveness of U.S. agricultural exports to the region, and would partially insulate the region against competition from China in the textile sector. In addition, the agreement would demonstrate U.S. commitment to strengthening democracy in a region that has struggled to emerge from its totalitarian past. Brady also took issue with Becerra's characterization of the region's labor problems, stating that good progress has been made in terms of strengthening labor laws.

III. Bush Touts DR-CAFTA in Weekly Radio Address, Before OAS Assembly, In Meeting With Members Of Congress

President George W. Bush continues to increase his profile in the debate over DR-CAFTA. In his June 4, 2005, weekly radio address, he urged Congress act quickly to pass DR-CAFTA, stating the following:

About 80 percent of products from Central America and the Dominican Republic now enter the United States duty free. Yet, American exports to those countries face hefty

tariffs. CAFTA will level the playing field by making about 80 percent of American exports to Central America and the Dominican Republic duty free. CAFTA will lower barriers in key sectors like textiles, which will make American manufacturers more competitive in the global market. And CAFTA will make our neighborhood more secure by strengthening young democracies. CAFTA is a practical, pro-jobs piece of legislation.

The President echoed the themes of his radio address at a meeting of the General Assembly of the Organization of American States (OAS) held on June 6, 2005, adding that DR-CAFTA would bring further political stability to the region.

On June 9, 2005, President Bush met with senior Members of Congress to discuss the agreement. Democrats present at the meeting reiterated their concerns over the agreement's labor provisions. Republicans present also raised concerns over the agreement's potential negative effects on the sugar industry.

OUTLOOK

USTR remains hopeful that the U.S. Congress can complete consideration of the agreement by the July 4 recess. House Majority Leader Tom DeLay (R-Texas) in a June 7, 2005 speech outlined a slightly less ambitious plan to bring the agreement to the floor before the August recess. Both sides of the debate continue to press undecided Members. Informal whip counts have those against DR-CAFTA within 20 votes of being able to defeat the agreement. Pro-DR-CAFTA advocates have acknowledged that they remain well short of the votes needed to pass the agreement.

U.S.-Andean FTA: Progress Achieved as Certain Issues Near Conclusion in Tenth Round of Negotiations

SUMMARY

Trade negotiators from the United States, Colombia, Peru and Ecuador achieved progress in the tenth round talks to establish the U.S.-Andean FTA, held June 5-10, 2005 in Guayaquil, Ecuador. Prior to the latest round, it was uncertain whether Ecuador would host or even continue to participate in the FTA talks after the ouster of its President. It appears, however, that the new leadership in Ecuador is willing to engage in FTA talks. While the President, Alfredo Palacios, did not attend the inauguration, he sent his full ministerial cabinet and spent over three hours the day before with the heads of negotiation for Colombia, Peru and U.S. – assuring the continued support of his government.

Negotiators have reached agreement on certain chapters including technical cooperation and electronic commerce. Other issues that are close to conclusion include non-tariff barriers, competition policy, customs and safeguards, cross-border services, financial services, telecommunications and government procurement. In addition, negotiators made progress on certain copyright provisions important to the Andean countries, investment, rules of origin, labor and textile provisions.

Among the outstanding issues, agriculture, intellectual property (such as data protection, patents and biodiversity), and sanitary and phytosanitary measures remain as particularly sensitive areas. Nevertheless, the Andean countries obtained zero tariff commitments in pouched tuna, but the U.S. has delayed negotiations on canned tuna until the last round.

Negotiations are expected to continue until at least September, with the most contentious issues such as agriculture and certain intellectual property to be dealt with at the end. The next round of talks will be held in Miami, Florida from the July 18-22, 2005, with additional rounds of bilateral negotiations on agriculture in the interim.

ANALYSIS

I. Negotiators Achieve Progress in Many Areas; Delay Discussion of Certain Sensitive Issues

A. Agreements Reached or Close to Conclusion

Negotiators are close to concluding several FTA chapters including on non-tariff barriers, competition policy, rules of origin, customs and safeguards, cross-border services, financial services, telecommunications and public procurement.

In addition to the previously closed chapter on electronic commerce, the chapter for technical cooperation was also finalized during the negotiations. Five new cooperation projects were approved, along with the forty-eight already agreed upon in previous rounds. These include, for example: a project to improve the inspection of the sacrifice process of bovine products and a project to create an information system that aids in the export of fruits and vegetables.

B. Sanitary and Phytosanitary Measures: Barriers Persist

While not immediately apparent, the issue of sanitary and phytosanitary measures is of high priority for the Andean countries. As the Technical VP for the Colombian Society of Agriculture states: “a zero percent tariff in our products is not enough because the U.S. uses SPS measures as a technical barrier of entry to its markets; we are making concessions in an area [agriculture] but continue to be denied real market access.”

The U.S. agreed to provide comments on the Andean proposal on sanitary and phytosanitary measures by the 24th of June as the representatives of these regulatory agencies did not attend the talks.

C. Investment Regulation: Monopolies and Capital Flows

Negotiators agreed to preserve the ability of the State to establish certain real estate monopolies, and also allowed the State to expropriate property for reasons of public utility or social interest.

In related matters, the Andean countries presented an annex regarding the regulation of capital flows. The Andean countries also provided further justification for the inclusion of foreign debt as investment. Discussion continued over the annex that deals with dispute resolution in this area.

D. Textiles: Combating Fraud; Safeguards Mechanisms

The parties agreed to establish a cooperation mechanism between customs agencies to combat fraud, a high priority issue for textile makers and designers. The initiative pivots on strengthening institutional capacity.

Negotiators also discussed safeguard measures in textiles, to last no more than two years and which can be extended for an additional year. In this regard, prior to any investigation that could lead to a safeguard measure, any country seeking to invoke safeguards must first notify the exporting country. Changes and advances in technology in the importing country are not considered as factors to establish injury or threat of injury. U.S. negotiators are also reviewing specific requirements for rules of origin in priority products for the respective Andean countries.

E. Intellectual Property: Progress on Copyrights

There was significant progress on the issue of copyright, particularly in regards to protection of cultural property rights. With respect to pharmaceuticals, the U.S. hopes to extend patent protection for products with more than one use from 20 to 25 years. In regards to technology transfer, the U.S. presented an offer that addresses the main priorities of the Andean countries. However, there was little movement on biodiversity, data protection or patents.

F. Professional Services: Recognition and Certifications

Negotiators agreed to establish a working group on the recognition of professional degrees and certifications. The parties agreed to focus on the licensing of engineers and accountants. In addition, they drafted a joint letter that encourages transparency in the

regulation of professionals of the States of New York, New Jersey, California, Texas, Florida and the District of Columbia.

G. Labor: Progress on a Simplified Text

Negotiators managed to ‘clean up’ much of the bracketed text on labor provisions. The issue of migration is still open and the U.S. is consulting with its respective agencies to clarify its position in the next round. The Andean countries also presented a proposal on procedural guarantees and improving labor consultations.

H. Dispute Settlement: Structure Defined

Negotiators made progress on defining the structure of the dispute settlement chapter. They agreed, for example, on the terms of compensation and suspension of benefits arising from inconsistent measures. The agreement on compensation suggests that each country could maintain the measure in question as long as the other party is compensated for the inconsistent measure. The U.S. reportedly will agree to the authority of the dispute resolution panel to issue final and binding decisions.

I. Financial Services: Definition of Financial Instruments

Recent discussions on financial services centered upon the definition of “financial instruments,” which is critical because the FTA provides that the signatory countries reserve the right to require prior registration of cross-border financial instruments or of financial instruments that its residents could acquire abroad.

In other developments, parties clarified that social security – its administration and modification, remains entirely outside the scope of the FTA. For instance, a private retirement fund may not claim that due to any changes of the national social security plan, that the fund has been denied access to the pension services market. In addition, negotiators reached agreements covering investment funds, insurance tax and credit analysis.

II. Agriculture: Some Progress on Tuna; Bilateral Discussions Forthcoming

While not dealt with directly in the recent talks in Guayaquil, Ecuador, agriculture remains a highly contested area. In fact, Colombia’s participation in the tenth round of talks was conditioned upon the confirmation by the U.S. of the next round of bilateral talks on agriculture. The next rounds of bilateral negotiations on agriculture with the U.S. will be held in Washington D.C. in June and July, including with Ecuador June 15-17 and Colombia July 11-13.

Despite the slow pace of negotiations on agriculture, pouched tuna made the list of zero tariffs during the previous round of talks. This concession on tuna, however, is conditioned on the results of the remaining rounds. Although the main priority of Andean countries for seafood products is canned tuna, the negotiators see it as a positive step. Talks on other tuna products, along with shrimp, have been postponed until September.

OUTLOOK

The U.S.-Andean FTA negotiations appear to be on track again, given the recent progress and continued participation of Ecuador after its political turmoil.

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

The FTA negotiations appear to be headed towards possible conclusion this year, especially since the three Andean countries will hold presidential elections in 2006. The FTA has been a controversial issue among domestic constituents of all negotiating partners including the U.S..

In the U.S., for example, the fate of the Andean FTA is somewhat linked to the contentious debate over the Central American FTA (“CAFTA-DR”). A failure to pass CAFTA-DR this summer would pose a serious setback to FTAs under negotiation, including with Andean countries and Thailand.

Negotiators from the U.S. and Andean countries hope to achieve progress in the critical area of agriculture in their bilateral discussions between now and July. They also hope to resolve other outstanding issues at the next round of talks in Miami, starting July 18 – and perhaps to conclude the agreement by September 2005.

US Aims to Complete MEFTA by 2013; Progress May Hinge on Ratification of DR-CAFTA and Human Rights Concerns in Some GCC Countries

SUMMARY

Indications are that the US is “well on its way” toward establishing a Middle East Free Trade Area (MEFTA) by 2013. This initiative contemplates using the U.S. Free Trade Agreements (FTAs) with Israel and Jordan and the recently concluded FTAs with Morocco and Bahrain as anchors to negotiate FTAs with other Middle Eastern countries. At some point before 2013, the U.S. intends to consolidate these FTAs to form the MEFTA.

We highlight below the progress that was made so far, and other recent developments:

- On May 25, 2005, Members of the U.S. House of Representatives urged the Administration to oppose Saudi Arabia's World Trade Organization (WTO) membership until it undertakes further commitments with regard to (i) human rights, (ii) religious freedom, (iii) its boycott of Israel, and (iv) the fight against terrorism.
- On May 31, 2005, the Trade Policy Staff Committee (TPSC), an interagency body chaired by the United States Trade Representative (USTR), requested public comments on the interim environmental review of the proposed U.S. FTA with the United Arab Emirates (UAE) (70 FR 30991).
- On June 3, 2005, the US threatened to impose sanctions against Saudi Arabia, Kuwait, Qatar, and the UAE, because of violations with regard to human trafficking.

ANALYSIS

Indications are that the U.S. is “well on its way” toward establishing a Middle East Free Trade Area (MEFTA) by 2013. As announced on May 9, 2003, this initiative contemplates a “building blocks” approach of using the U.S. Free Trade Agreements (FTAs) with Israel and Jordan and the recently concluded FTAs with Morocco and Bahrain as anchors to negotiate FTAs with other Middle Eastern countries. As precursors to the FTAs, the U.S. will support Middle Eastern countries acceding to the World Trade Organization (WTO) and negotiate Trade and Investment Framework Agreements (TIFAs), upon which the FTAs would build. At some point before 2013, the U.S. intends to consolidate these FTAs to form the MEFTA. (Please see W&C May 2003 report)

We highlight below recent progress and other developments.

I. Progress Made So Far

Since the announcement of the MEFTA initiative, the U.S. has:

- Signed and ratified an FTA with Morocco: the agreement was scheduled to enter into force on January 1, 2005, but both parties delayed this until July 1, 2005.

- Signed an FTA with Bahrain: sources indicate that the FTA with Bahrain enjoys strong support in the U.S. Congress, and will be ratified after Congress has considered the U.S.-Dominican Republic-Central America (DR-CAFTA) FTA.
- Signed TIFAs and launched FTA negotiations with Oman and the United Arab Emirates (UAE): the US has held two rounds of negotiations with each country. U.S. officials have indicated that the negotiations are proceeding well and could be concluded “within the next few weeks,” possibly by early July.
- Discussed possible FTAs with Egypt, Kuwait, Qatar, and Tunisia under their existing TIFAs: Egyptian Prime Minister Ahmed Nazif and President Bush recently agreed to continue discussions on a possible FTA. Sources indicate, however, that such an agreement is not an immediate U.S. priority.

The US further (i) signed TIFAs with Kuwait, Qatar, Saudi Arabia and Yemen; (ii) continued WTO accession negotiations with Algeria, Yemen, and Saudi Arabia; and (iii) launched preliminary discussions with Iraq and Libya on their WTO accessions.

II. Other Recent Developments

A. Members Of Congress Urge Administration To Oppose Saudi Arabia’s WTO Membership

On May 25, 2005, a bipartisan group of 47 Members of the U.S. House of Representatives sent a letter to USTR Rob Portman, urging the Administration to oppose Saudi Arabia's WTO membership, noting that it would be premature to conclude the WTO accession negotiations. In particular, the letter notes that Saudi Arabia first needs to (i) improve its track record on human rights and (ii) religious freedom, (iii) renounce its boycott of Israel, and (iv) undertake further commitments to fight terrorism.¹

B. TPSC Requests Comments On Interim Environmental Review Of FTA With UAE

On May 31, 2005, the United States Trade Representative (USTR) announced in the Federal Register (70 FR 30991) that the Trade Policy Staff Committee (TPSC), an interagency body chaired by USTR, is requesting public comments on the interim environmental review of the proposed U.S. FTA with the United Arab Emirates (UAE).² As requested by the Trade Act of 2002, this review focuses on the U.S. environmental impact of the agreement, and also takes into account global and transboundary impacts. The comments are due by July 15, 2005.

¹ The full text of the letter is available at <http://www.cardin.house.gov/News.asp?ARTICLE3099=84856>

² The full text of the interim environmental review is available at http://www.ustr.gov/Trade_Sectors/Environment/Environmental_Reviews/Section_Index.html

C. US Threatens To Sanction Four GCC Countries For Human Trafficking Violations

On June 3, 2005, the US threatened to impose sanctions against Saudi Arabia, Kuwait, Qatar, and the UAE, following the release of an annual U.S. State Department report on global human trafficking.³ The report criticized the four Gulf Cooperation Council (GCC) countries' compliance with the minimum standards of the U.S. Trafficking Victims Protection Act of 2000 (P.L. 106-386), and downgraded their compliance to the lowest category (Tier 3). P.L. 106-386 mandated the report, and provides that the President can withhold non-humanitarian, non-trade related assistance from Tier 3 governments that do not take steps to combat human trafficking within a three-month period. The US could also retaliate by opposing assistance from international institutions or multilateral developments banks.

OUTLOOK

U.S. officials have indicated that in the short term, the U.S. will focus on the ongoing FTA negotiations with Oman and the UAE, in order to maintain the momentum towards creation of the MEFTA. (Please see W&C May 2005 Report)

However, progress on these agreements may hinge on the passage of DR-CAFTA. Moreover, the recent complaints about human trafficking violations among Gulf countries may also have a negative influence on the negotiation of an FTA, including with the UAE, and its chances of ratification in the U.S. Congress.

³ The full text of the "Trafficking in Persons Report" is available at <http://www.state.gov/g/tip/rls/tiprpt/2005>

FTA Highlights

President Bush And Prime Minister Of Egypt Have “Very Good Discussion” On Possible US-Egypt FTA

On May 18, 2005, President George W. Bush met with the Prime Minister of Egypt Ahmed Nazif in Washington, DC. The White House indicated afterwards that both parties had a “very good discussion” on a possible US-Egypt Free Trade Agreement (FTA), but refused to disclose any further details. Sources indicate however that such an agreement is not an immediate U.S. priority, and that Egypt needs to undertake further reforms in certain areas, particularly with regard to intellectual property protection (IPR).

US And Indonesia Resume Talks Under TIFA

On May 25, 2005, President Bush met at the White House with Indonesian President Susilo Bambang Yudhoyono, to discuss numerous issues of mutual concern, including ways to strengthen U.S.-Indonesia economic cooperation and trade relations. The Presidents afterwards issued a joint statement, wherein they welcomed the resumption of the discussions under the U.S.-Indonesia Trade and Investment Framework Agreement (TIFA), after a five-year hiatus. TIFAs often serve as a first step towards the negotiation of an FTA, although such an agreement is unlikely in the near future.

ITC Releases Study Of Impact Of U.S. FTAs With Chile, Singapore, And Australia

On June 1, 2005, the U.S. International Trade Commission (USITC) submitted to the U.S. Congress, as required by the Trade Act of 2002, a study of the impact of three FTAs that were concluded since the renewal of Trade Promotion Authority (TPA) in August 2002. In particular, the ITC analyzed the impact of the U.S.-Chile and the U.S.-Singapore FTAs, which entered into force on January 1, 2003, and the U.S.-Australia FTA, which entered into force on January 1, 2005.

The study concluded that the FTAs will have very little effect on the U.S. economy overall. Trade in some sectors, such as meat products and textiles and apparel, will increase substantially, but is also small in comparison with U.S. trade with the world and with U.S. output.

The full text of the study, which is entitled “*The Impact of Trade Agreements Implemented Under Trade Promotion Authority*” (Inv. No. TA-2103-1, USITC Publication No. 3780, June 2005), is available at www.usitc.gov.

USTR Portman Says Korea Needs To Lift Ban On U.S. Beef And Reduce Screen Quota Against U.S. Films Before FTA is Possible

From June 2-3, 2005, United States Trade Representative (USTR) Rob Portman visited Korea, where he attended a meeting of the Trade Ministers of the Asia Pacific Economic Cooperation (APEC). In a press conference on June 3, Portman said that discussions focused on the ongoing negotiations under the World Trade Organization’s (WTO) Doha Development Agenda (DDA), as well as on problems with counterfeiting and piracy in the Asia Pacific region. When asked about the prospects of a FTA between the US

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and Korea, he responded that both parties had not discussed the issue during the APEC meeting. Portman added that the U.S. Administration would first hold consultations with the U.S. Congress and the U.S. stakeholders and would only take a decision once Korea had lifted its current ban on U.S. beef imports and had reduced its current screen quota against U.S. films.

President Bush And South African President Mbeki Pledge To Intensify Efforts To Conclude US-SACU FTA

On June 10, 2005, President Bush and his South African counterpart Thabo Mbeki released a joint statement, commenting on their meeting in Washington, DC, on June 1, 2005. The statement notes that during the meeting, Bush and Mbeki agreed on the economic benefits of a U.S.-Southern African Customs Union (SACU) FTA and its potential to create economic growth and jobs, and decided to intensify efforts to conclude the agreement in the coming 12 months.

US-EUROPEAN UNION

European Commission Proposes Joint EU-US Strategy To Strengthen Transatlantic Partnership

SUMMARY

On May 18, 2005, the European Commission adopted a Communication outlining proposals for a joint EU-US strategy to reinvigorate the Transatlantic Relationship and establish a stronger EU-US Partnership. The Commission proposes to increase economic integration between the parties by improving (i) regulatory cooperation, (ii) promotion of innovation, and (iii) border arrangements. The Communication also contains numerous ideas for strengthening the political framework of the Transatlantic Partnership. It does not touch, however, on the issue of a potential Transatlantic Free Trade Agreement (FTA) between the EU and the US.

The EU and the US discussed the Communication further at the upcoming EU-US Summit on June 20, 2005, and the Commission had proposed that on this occasion both parties would give senior officials the task of developing the proposals into a more concrete project. (*A full report on the outcome of the Summit is currently being prepared and will be included in our next Monthly Report*) Sources indicate that the EU hopes to have this project ready and to sign a formal agreement by the 2006 Summit in Austria.

ANALYSIS

I. Commission Proposes Improvements With Regard To Regulatory Cooperation, Innovation, And Border Arrangements

On May 18, 2005, the European Commission adopted a Communication entitled “*A stronger EU-US partnership and a more open market for the 21st century*”, which outlines proposals for a joint EU-US strategy to reinvigorate the Transatlantic Relationship and establish a stronger EU-US Partnership.⁴ The Commission notes that although the trade and investment relationship between the EU and the US is thriving, the current economic policy agenda suffers from “negotiating fatigue”, and that various non-tariff and regulatory barriers persist. The Commission therefore proposes to increase economic integration between the parties by making improvements in the following areas:

- **Regulatory cooperation:** the Commission proposes to hold a Regulatory Cooperation Forum ahead of each EU-US Summit, to bring senior EU and US sectoral regulators together to submit an annual Roadmap with objectives and priorities for the future.
- **Promotion of innovation:** among other things, the Commission proposes to (i) identify priority areas for research collaboration, (ii) strengthen policy dialogue on sustainable sources of energy and satellite navigation, and (iii) promote academic exchanges.

⁴ <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/572&format=HTML&aged=0&language=EN&guiLanguage=en>

- **Border arrangements:** noting that striking a balance between security requirements and trade and passenger transport facilitation remains the main challenge, the Commission proposes to focus on simplifying trade procedures for “authorized economic operators” in both the US and the EU.

II. Communication Provides Numerous Ideas For Strengthening Political Framework Of Transatlantic Partnership

The Communication also contains numerous ideas for strengthening the political framework of the Transatlantic Partnership, including:

- Setting out common values in a new Transatlantic Declaration;
- Giving EU-US Summits a more strategic focus;
- Negotiating a new Joint Action Plan;
- Creating a forum to discuss macroeconomic issues of common interest; and
- Enhancing the existing “Legislators’ Dialogue” between the European Parliament and the US Congress, as a first step towards a “Transatlantic Assembly”.

III. Communication Does Not Touch On Potential EU-US FTA

The Communication does not touch on the issue of a potential Transatlantic Free Trade Agreement (FTA) between the EU and the US. The idea of an FTA first came up in February 2004 in a speech of former Spanish Prime Minister José Maria Aznar before the US Congress (*Please see W&C February 2004 EU Report*). More recently, US House Rules Committee Chairman David Dreier (R-California) introduced on April 13, 2005 a non-binding resolution (H. Con.Res.131) calling for such an agreement. Sources indicate, however, that EU and US stakeholders currently have little interest in an FTA, and both the Commission and the United States Trade Representative (USTR) have expressed similar sentiments.

OUTLOOK

The Communication is part of an initiative to strengthen the Transatlantic Economic Partnership, as launched at the EU-US Summit on June 26, 2004 (*Please see W&C June 2004 EU Report*), and reflects a series of stakeholder meetings with private-sector representatives that have taken place since.⁵ The EU and the US will discuss the Communication further at the upcoming EU-US Summit on June 20, 2005, and the Commission proposed that on this occasion both parties would charge senior officials to develop the proposals into a more

⁵ Please go to http://europa.eu.int:8082/comm/external_relations/us/consultation/results/index.htm and http://www.ustr.gov/World_Regions/Europe_Mediterranean/Transatlantic_Dialogue/Public_Comments/Section_Index.html for the results of these stakeholder meetings.

concrete project. Sources indicate that the EU hopes to have this project ready and to sign a formal agreement by the 2006 Summit in Austria.

The bilateral trade and investment relationship between the EU and the US is the largest in the world, with trade in goods and services amounting to \$750 billion in 2003, and foreign investment amounting to \$1.75 trillion. However, the relationship has recently been affected by numerous high-profile disputes. For example, most recently, both parties requested the establishment of WTO dispute settlement panels to resolve their ongoing dispute over their alleged unfair subsidization of Airbus and Boeing. It is worth noting, however, that on this occasion both USTR Rob Portman and EU Trade Commissioner Peter Mandelson indicated that they would not let this issue interfere with the other aspects of the EU-US relationship. *(Please see related report this edition)*

US And EU Request Establishment Of WTO Dispute Settlement Panels To Resolve Dispute On Subsidization Of Airbus And Boeing

SUMMARY

On May 31, 2005, the United States requested the establishment of a World Trade Organization (WTO) dispute settlement panel to resolve the ongoing dispute with the European Union over European governments' alleged unfair subsidization of Airbus. In an immediate countermove, the EU later the same day requested the establishment of a WTO dispute settlement panel to rule on the US government's alleged unfair subsidies to Boeing.

The parties decided to return to the WTO after they failed to negotiate a solution to the dispute. United States Trade Representative (USTR) Rob Portman said the US action resulted from the EU's refusal to abide by the terms of holding off on launch aid to Airbus while negotiating the immediate elimination of all subsidies. In response, EU Trade Commissioner Mandelson said the negotiations had failed because the US demanded the immediate elimination of all subsidies to Airbus as a prior condition, without offering a commensurate balancing package with regard to its subsidies to Boeing.

At a meeting of the WTO Dispute Settlement Body (DSB) On June 13, 2005, the EU and the US exercised their right to block each other's requests. Establishment of the panels will now be virtually automatic at the next DSB meeting, which will take place on June 20, 2005. Under the WTO dispute settlement procedures, the actual litigation could then take up to three years.

ANALYSIS

I. US And EU Request Establishment WTO Dispute Settlement Panels To Rule On Alleged Unfair Subsidization Of Airbus And Boeing

On May 31, 2005, the US requested the establishment of a World Trade Organization (WTO) dispute settlement panel to resolve its ongoing dispute with the EU over European governments' alleged unfair subsidization of Airbus.⁶ In an immediate countermove, the EU later the same day requested the establishment of a WTO dispute settlement panel to rule on the US government's alleged unfair subsidies to Boeing.⁷

The US and the EU first decided to file WTO dispute settlement cases against each other on October 6, 2004, following a longstanding dispute between Boeing and its main competitor Airbus.⁸ In particular, each party argues that the other's subsidies violate (i) the WTO Agreement on Subsidies and Countervailing Measures ("SCM Agreement" or "SCM"), and (ii) a bilateral 1992 EU-US Agreement on Large Civil Aircraft (LCA) regulating aircraft subsidization.⁹ (*Please see W&C October 2004 EU Report*)

⁶ WT/DS316/2

⁷ WT/DS317/2

⁸ WT/DS316/1 and WT/DS317/1

⁹ This agreement is not incorporated into the WTO.

After a 60-day consultation period, the EU and the US decided to resolve the issue through bilateral negotiations, and with this aim they signed on January 11, 2005 a standstill agreement on launch aid, while negotiating the immediate elimination of all subsidies to LCA producers by April 11, 2005.¹⁰ (*Please see W&C January 2005 EU Report*) Both parties failed to meet this deadline, but on May 2, 2005 they announced that they would continue the negotiations on the basis of the same agreement.

II. U.S. Says EU Refuses To Abide By Terms Of Agreement; EU States That US Refuses To Make Corresponding Concessions

United States Trade Representative (USTR) Rob Portman said the US had decided to go back to the WTO because the EU had refused to abide by the January 11 agreement's terms of holding off on launch aid and immediately eliminating all subsidies.¹¹ He noted in particular that there were indications that EU Member States were preparing to provide more than \$1.7 billion in launch aid to Airbus for the development of its new A350 aircraft.

The US action was also triggered by EU Trade Commissioner Mandelson's proposal on May 27, 2005 that both sides would first reduce subsidies by 30% and then make additional cuts following bilateral discussions. The US rejected this proposal and was reportedly upset by the fact that Mandelson had made public what it considered as a confidential offer.

In response, Mandelson said that the EU had no choice but to return to the WTO after the US had rejected his latest proposal. He added that the negotiations had failed because the US had demanded the immediate elimination of all subsidies to Airbus as a prior condition, without offering a commensurate balancing package with regard to its subsidies to Boeing.¹²

III. Mandelson And Portman Stress That Dispute Will Not Interfere With Other Aspects Of EU-US Relationship

Although the trade and investment relationship between the EU and the US is the most important in the world, it has been strained in recent years, and both parties have expressed concern that WTO dispute settlement over the subsidization of Boeing and Airbus might increase political and commercial tension; and have a negative effect on joint efforts to complete the WTO negotiations under the Doha development Agenda (DDA). Mandelson and Portman therefore indicated that they continue to prefer a negotiated solution, and in a joint statement¹³ they stressed that they will not let this dispute interfere with the other aspects of the EU-US relationship.

¹⁰ The full text of the "*EU-US Agreement on Terms for Negotiation to end Subsidies for Large Civil Aircraft*" is available at http://europa.eu.int/comm/trade/issues/respectrules/dispute/pr110105_agr_en.htm

¹¹ http://www.ustr.gov/Document_Library/Press_Releases/2005/May/United_States_Takes_Next_Step_in_Airbus_WTO_Litigation.html

¹² http://europa.eu.int/comm/commission_barroso/mandelson/speeches_articles/temp_icentre.cfm?temp=sppm032_en

¹³ http://www.ustr.gov/Document_Library/Press_Releases/2005/May/Joint_Statement_of_USTR_Rob_Portman_EU_Trade_Commissioner_Peter_Melson_Regarding_the_dispute_over_Airbus-Boeing_the_W.html

OUTLOOK

On June 13, 2005, at the meeting of the WTO Dispute Settlement Body (DSB), the EU and the United States exercised their right to block each other's requests.¹⁴ The establishment of the panels will now be virtually automatic at the next DSB meeting, which will take place on June 20, 2005. Under the WTO dispute settlement procedures, the actual litigation could then take up to three years.

As to the outcome of the dispute, both the EU and the US have expressed confidence in their chances of success. Airbus's recent request for launch aid could benefit Boeing's case, but sources indicate that the WTO is likely to rule that both Boeing and Airbus receive illegal subsidies. However, it seems probable that this will not resolve the issue and that further bilateral or multilateral negotiations will be necessary to establish future limits.

It is also worth noting that Mandelson mentioned he was keeping Japan's subsidies to Boeing on his "radar screen", although he added that he would not extend the dispute to include third parties. However, he did not rule out possible litigation in the future.

¹⁴ http://www.wto.org/english/news_e/news05_e/dsb_13june05_e.htm

OECD Publishes Study On Impact Of Possible EU And US Reforms To Reduce Barriers To Transatlantic Trade

SUMMARY

On May 26, 2005, the Organization for Economic Cooperation and Development (OECD) published a study on the possible impact of a package of structural reforms in the European Union and the United States on trade and the resulting benefits for the OECD countries. In particular, the reforms aim to reduce (i) competition-restraining regulations, (ii) barriers to foreign direct investments (FDI), and (iii) tariffs for agricultural and non-agricultural products to “best practice”- levels.

The study concludes that the measures, and particularly the reforms that allow greater competition, could result in per capita GDP increases in the EU and the US, as well as in other OECD countries. However, since there is more need to ease the competition restrictions in the EU than in the US, the economic benefits of the reforms would be greater in Europe.

ANALYSIS

On May 26, 2005, the Organization for Economic Cooperation and Development (OECD) published a study on Transatlantic trade and investment, entitled “*The Benefits of Liberalizing Product Markets and Reducing Barriers to International Trade and Investment: The Case of The United States and The European Union*”.¹⁵ The study analyzes the possible impact of a package of structural reforms in the EU and the US on trade and the resulting benefits for the OECD countries. In particular, the reforms aim to reduce (i) competition-restraining regulations, (ii) barriers to foreign direct investments (FDI), and (iii) tariffs for agricultural and non-agricultural products to “best practice”- levels.¹⁶

The study concludes that moving to “best practice” - policies could have the following benefits:

- Benefits of up to \$300 billion for each party, with per capita GDP increases of 1 to 2.5% in the US and 2 to 3% in the EU. The higher GDP levels would have a cumulative effect on earnings.
- Significant trade linkages and spillovers to other OECD members, with GDP increases of up to 2% for Canada and Mexico and 1.5% for Turkey, Japan and Central Europe. OECD exports as a whole may increase up to 25%.

The study establishes benchmarks of best practices and notes that matching these would require major reform efforts in all OECD countries. However, there is more need to

¹⁵ [http://www.oelis.oecd.org/olis/2005doc.nsf/43bb6130e5e86e5fc12569fa005d004c/e631e1ab77837fc0c1257019002c14e0/\\$FILE/JT00185017.PDF](http://www.oelis.oecd.org/olis/2005doc.nsf/43bb6130e5e86e5fc12569fa005d004c/e631e1ab77837fc0c1257019002c14e0/$FILE/JT00185017.PDF)

¹⁶ The study defines “best practice” as “the regulatory framework most supportive of good economic performance”, and establishes benchmarks of best practices against which other OECD countries can be measured.

ease the competition restrictions in the EU than in the US, and the economic benefits of the reforms would therefore also be greater in Europe. The study notes that the EU particularly needs to reduce the regulatory barriers in the air, rail and road transport and in the gas and electricity sectors, while the US needs to focus on its rail transport and electricity sectors. Overall, the reforms that allow greater competition, especially in the services sector, would have the most effect on GDP.

OUTLOOK

On June 9, 2005, U.S. Secretary of Commerce Carlos Gutierrez and Secretary of the Treasury John W. Snow issued a press release wherein they applauded the study's emphasis on the importance of reducing regulatory barriers in transatlantic relations.¹⁷ Gutierrez also praised the timing of the report, noting that it was published at a time when both parties were developing a roadmap for revitalizing the transatlantic trade relations.

It is worth noting that the study was limited to a narrow set of policies and did not focus on environmental or safety regulations, state regulations with regard to agriculture, labor, and the financial market, and on distortions caused by social welfare mechanisms. Overall gains could thus be significantly higher if both parties implement broader reforms.

¹⁷ <http://www.treas.gov/press/releases/js2489.htm>

US-LATIN AMERICA

NAFTA

Senior North American Officials and Business Leaders Discuss the Future of Regional Integration at “Hemispheria 2005 Summit”

SUMMARY

On May 12 and 13, 2005, senior government officials and entrepreneurs from Mexico, Canada and the United States gathered at the “Hemispheria 2005 Summit”, in San Pedro Garza Garcia, Nuevo Leon, Mexico. The two-day event aimed to discuss a common agenda to further regional integration, energy supply responsibility and improving competitiveness among NAFTA partners.

The event resulted in a joint declaration called “The San Pedro Declaration” which will be delivered to North American governments and legislative bodies to consider when implementing further policies affecting the North America region.

ANALYSIS

On May 12 and 13, 2005, Government leaders, entrepreneurs, and state and municipal officials from Mexico, Canada and the United States met at “Hemispheria 2005 Summit”, at San Pedro Garza Garcia, Nuevo Leon, Mexico. The main topics discussed by speakers were further regional integration, energy supply responsibility and improving competitiveness among NAFTA partners.

I. Senior Government And Business Leaders Call For Greater NAFTA Integration

The Hemispheria 2005 Summit featured representatives of the North American governments, state governments and municipal officials. Speakers discussed their views about NAFTA outcomes and the challenges and opportunities to advance further regional integration.

Luis Ernesto Derbez, Mexican Foreign Relations Secretary, said that a top concern is to increase security along the border without hindering the flow of goods and people. Derbez indicated that terrorism is no longer just a security challenge for the United States, but a challenge for the whole North American region.

Fernando Elizondo, Mexican Energy Secretary, expressed that Mexico is working to address rising energy demands. Elizondo stated that energy supply is vital for a country to subsist and develop. He noted that the liquefied natural gas terminals being developed in Baja California and the Gulf of Mexico will help meet the region's future energy needs.

Bill Richardson, Governor of New Mexico, proposed the creation of an energy council to address the region's energy needs. The proposed North America Energy Council would serve to track and analyze critical regional information related to energy sources, the environment and trade. Also it would help resolve regional issues and disputes, and serve as a forum to exchange information and ideas.

Carlos Slim Helú, President of Grupo Carso, stated the NAFTA region is facing greater competition from regional economic blocs including in Europe and Asia. He noted that although trade flows among NAFTA partners have increased; however, NAFTA is an incomplete accord because it lacks labor integration. Slim commented that Mexico must become a lawful state, pursue economic development with labor advancement, expand development of infrastructure and human capital, and increase the efficiency of the state administration.

Lorenzo Zambrano Treviño, President of CEMEX, called for regulation of the migration flow to the United States by means of an accord where the Mexican labor force is a pillar of regional integration. Zambrano expressed that a competitive North American region is not feasible without a fair migration accord. He concluded that it is a priority to achieve a framework in which the three countries have equal benefits and the development gap between them is eliminated.

Federico Sada González, Director of Grupo Vitro, stated that NAFTA partners should not rely only upon the good results of the agreement. Sada suggested that the region needs more ambitious and innovative initiatives such as establishing a common exchange currency and an integral labor market. The private sector of the three countries must help to pave the new steps to advance NAFTA

Antonio Garza, U.S. Ambassador to Mexico, noted that Mexico must reform its energy sector in order not to lag behind. Garza stressed that Mexico must find a better way to exploit its energy resources because Mexico's competitiveness and prosperity depends on it. He concluded that Mexico cannot depend on Mexican's remittances because that is not an economic policy.

Carlos M. Gutierrez, U.S. Secretary of Commerce remarked that further economic integration of the North America region is needed to compete efficiently with Asia and Europe. Gutierrez stressed that the Security and Prosperity Partnership (SPP) could be an engine to increase integration and coordinate policies against piracy, security issues, sectoral markets and trade cost reductions.

II. San Pedro Declaration Outlines Areas For Further Cooperation

The event resulted in a joint declaration called the "San Pedro Declaration" which will be delivered to North American governments and legislative bodies. The conference participants urged their governments to take into consideration the Declaration's recommendations when implementing further policies for the North America region.

The San Pedro Declaration comprises the following ten recommendations:

1. To advance the North American Free Trade Agreement
2. To develop regional energy policies
3. To address the migration phenomenon
4. To promote regional competitiveness
5. To develop regional infrastructure

6. To share and adopt government best practices
7. To support education programs
8. To facilitate and promote security
9. To promote cultural diversity
10. To dignify economic humanism

José Natividad González, Governor of the State of Nuevo Leon, closed the event by urging the audience to take the political decisions necessary to establish an open, efficient and safe frontier in the region, and to develop the proper infrastructure to support the increase of trade among the NAFTA partners. He remarked that Hemispheria 2005 is the first step towards a new path that governments, business leaders and civil societies will have to take in order to make the NAFTA region more prosperous for its people.

OUTLOOK

Recent discussions between governments, business leaders and scholars in the region reflect the diverse perspectives on further integration and competitiveness of North America region. Hemispheria 2005 highlighted the need to promote competitiveness in light of increased competition from Asia and Europe. The conference also called for measures to improve secure borders without hindering trade and the urgent need to coordinate regional energy policies.

Most speakers at the conference called for advancing North America economic integration, including on labor and immigration issues. These issues remain controversial, and it will be difficult to pursue immigration reform given the resistance by the U.S. Congress among other parties.

The challenge of further trilateral discussions is to agree on the collective and appropriate mechanisms to achieve further economic integration. Most agree that the region's competitiveness will require deeper NAFTA integration, among other trade-related initiatives.

MULTILATERAL

Panel Rules U.S. “Sunset Policy Bulletin” Illegal Under WTO

SUMMARY

On June 20, 2005, a WTO Panel released a decision in *United States - Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico* (DS282), ruling that the U.S. “Sunset Policy Bulletin”, which preordains when the U.S. Department of Commerce will find “likely dumping,” violates U.S. obligations under the WTO Anti-Dumping Agreement. In a challenge brought by Mexico, the Panel found that the Bulletin established an “irrebuttable presumption” of likely dumping, contrary to the obligation to ensure a “sufficient factual basis” to extend anti-dumping orders. The Panel also found that the determination of the DOC in this case was WTO-inconsistent as applied, because it was “not supported by reasoned and adequate conclusions.” However, the Panel dismissed Mexico’s claims related to the determination of likely injury, and Mexico’s claims regarding Commerce’s “revocation review.”

ANALYSIS

I. U.S. Sunset Policy Bulletin Found To Be WTO-inconsistent “As Such”

A. Disciplines Imposed By “Sunset Review” Provision Of Anti-Dumping Agreement

Before examining Mexico’s challenge to the applicable U.S. law, the Panel reviewed the disciplines imposed on investigating authorities by Article 11.3 of the Anti-Dumping Agreement. Article 11.3 provides in part that an anti-dumping duty must be terminated no later than five years after its imposition, unless the authorities determine that the expiry of the duty “would be likely to lead to continuation or recurrence of dumping and injury.”

The Panel - relying on the 2004 decision of the Appellate Body in the *US -Argentina Sunset Review* case - stated that a determination of likely dumping under Article 11.3 must have a “sufficient factual basis”, and cannot be based on “presumptions that establish *a priori* conclusions in certain factual situation[s] without the possibility of consideration of all the facts and circumstances.” Applying the Appellate Body’s earlier ruling, the *US - Mexico Sunset Review* Panel stated that “if certain evidentiary factors are treated [by the investigating authority] as determinative or conclusive, we would conclude that they create an irrebuttable presumption” of likely dumping, inconsistently with Article 11.3. On the other hand, such a violation would not be established if the factors required for consideration were merely “probative and indicative, but not determinative” in the assessment of likely dumping.

B. U.S. Sunset Policy Bulletin Establishes An “Irrebuttable Presumption” Of Likely Dumping

Mexico argued that U.S. law established a WTO-inconsistent presumption that dumping was likely to continue or recur in certain specified factual circumstances. Mexico challenged a U.S. statutory provision, the Statement of Administrative Action (which accompanied the U.S. implementing legislation for the Uruguay Round, and which by its own

terms is considered an “authoritative expression by the United States” of its WTO obligations) and the DOC Sunset Policy Bulletin of the Department of Commerce.

More particularly, Mexico argued that U.S. law required the DOC to give determinative or conclusive weight to two factors: (i) the existence of “historical dumping margins” (margins determined in the original investigation and/or subsequent reviews) and (ii) import volumes before and after the imposition of the anti-dumping order.

The Panel stated that the statute, read in light of the SAA, did not assign “conclusive or determinative weight” to these two factors. It then turned to the Sunset Policy Bulletin, which stated that the DOC “normally” will find likely dumping based on certain factual scenarios. These scenarios were in turn based on the two factors Commerce was required by statute to consider, i.e., historical dumping margins and import volumes.

The Panel found it was “not sufficiently clear from the text of the SPB” whether determinative or conclusive weight was attributed to these two factors. Therefore, the Panel said that it needed to extend its analysis to consider the evidence of the DOC’s application of the SPB, to determine whether the Department considered such factors as “determinative or conclusive” or merely indicative.

Mexico had placed in evidence the preliminary and final DOC determinations in 306 sunset reviews, i.e., the determinations in all sunset reviews conducted by the DOC since the entry into force of the WTO Agreement. The Panel found that its qualitative analysis of the DOC decisions revealed “a clear picture.” In the view of the Panel, the DOC “consistently based its determinations in sunset reviews exclusively on the scenarios, to the disregard of other factors.” The Panel found that “the actual determinations made, which in all cases ultimately conform to the results predicted in the SPB scenarios, belie the conclusion that USDOC does not consider them as conclusive or determinative in sunset reviews.” The Panel concluded that “the SPB scenarios are treated as conclusive or determinative in sunset reviews.” Accordingly, the Panel ruled that “the SPB establishes an irrebuttable presumption...[and] Mexico has demonstrated that the SPB is, as such, inconsistent with Article 11.3” of the Anti-Dumping Agreement.

II. Commerce Determination WTO-Inconsistent As Applied

The Panel also ruled that the determination of the DOC in this case violated Article 11.3, as applied, because it was “not supported by reasoned and adequate conclusions.” The DOC made its determination of likely dumping on the basis of a decline in import volumes, and failed to consider “potentially relevant evidence.” The Panel said that there was no indication on the face of the Department’s decision memorandum that the DOC considered any of the information or arguments presented concerning changes in the financial situation of the affected company, TAMSA, or the overall economic conditions in Mexico. In the view of the Panel, this was “not consistent with the obligation [of the investigating authority] to make a reasoned analysis on the basis of relevant facts....”

III. Panel Upholds U.S. Measures On Injury

A. Mexico’s “As Such” Challenges To U.S. “Likely” Standard Dismissed

As noted above, Article 11.3 provides in part that anti-dumping orders must be terminated no later than five years after their imposition, unless the investigating authorities determine that the expiry of the duty would be “likely” to lead to continuation or recurrence of dumping and injury. The Appellate Body had earlier ruled that “likely” means “probable.” Mexico argued that the U.S. International Trade Commission (USITC), based on guidance from the SAA, does not interpret “likely” to mean “probable.” Indeed, in NAFTA litigation involving the same determination at issue in the WTO dispute, the USITC argued that “Congress did not intend ‘likely’ to mean ‘probable’ or ‘more probable than not.’”

The Panel said that it did not consider such statements to be “relevant”, because “[o]n its face, the USITC determination refers to the proper standard.” The Panel said that it could not “look behind the standard which the USITC clearly stated it was applying in its determination and assess in the abstract whether it applied the correct legal standard of likelihood.” In the Panel’s view, “the only way...to assess whether, in fact, the proper legal standard was applied is to evaluate the determination actually made in light of that standard.”

B. The “Temporal Issue”: Timeframe For A Likely Injury Determination

U.S. law provides that during a sunset review, the USITC must determine whether revocation of the order would be likely to lead to continuation or recurrence of injury “within a reasonably foreseeable time.” U.S. law also states that the Commission “shall consider that the effects of revocation...may not be imminent, but may manifest themselves only over a longer period of time.”

Mexico argued that U.S. law allowed a longer timeframe for determination of likely injury than was permitted under Article 11.3. This claim was rejected, in part because of the Panel’s view that “Article 11.3 does not establish any rules regarding the time-frame” for a likelihood determination. The Panel also found that the temporal elements of Articles 3.7 and 3.8 of the Agreement - dealing with threat of injury - did not apply during sunset reviews.

IV. USITC’s “Likely” Determination Found WTO-Consistent As Applied

The Panel similarly dismissed Mexico’s “as applied” challenge to the USITC’s likely determination in the sunset review in this case. The Panel stated that Mexico's claims were “almost entirely premised on the provisions of Article 3” of the Anti-Dumping Agreement, which establish rules for the determination of injury. However, the Panel argued that “the nature of the inquiries in [original] investigations and sunset reviews is significantly different.” The Panel stated that a “determination of injury in an original investigation is a conclusion regarding the situation of the industry during the period investigated, based on historical facts”, while a “determination of likelihood of continuation or recurrence of injury in a sunset review...is a conclusion regarding the likely situation of the industry in the future, following revocation of an anti-dumping measure that has been in place for five years.” The Panel considered that an investigating authority was not required to make an injury determination in a sunset review. Therefore, according to the Panel, “the obligations set out in Article 3 are not directly applicable in sunset reviews.”

The Panel similarly rejected Mexico’s “as applied” claims against the USITC sunset review determination in this case under Article 11.3, saying that it could not conclude that the USITC's findings were not based on positive evidence.

“Cumulation” Of Imports Not Prohibited

Article 3.3 of the Agreement provides that where imports of several countries are simultaneously subject to anti-dumping investigations, the authorities may “cumulatively assess the effects of such imports” provided certain conditions are met. Mexico argued that investigating authorities were not permitted to cumulate in sunset reviews, as Article 3.3 referred only to original “investigations.” In the alternative, Mexico argued that if cumulation were permitted during sunset reviews, the authorities had to comply with the conditions set out in Article 3.3.

The Panel rejected this claim, in part because of its view that “the text of Article 11.3 does not mention cumulation at all” and “the silence of the AD Agreement on the question of cumulation in sunset reviews is properly understood to mean that cumulation is permitted in sunset reviews.” Moreover, the Panel stated that the conditions on the use of cumulation, as set out in Article 3.3, applied only during original investigations.

V. No Breach Of Rules On “Changed Circumstances”

Article 11.2 of the Agreement provides for a so-called “changed circumstances review.” It provides in part that investigating authorities “shall review the need for the continued imposition of the duty...upon request by any interested party which submits positive information substantiating the need for a review.” Following the review, if the authorities determine that the anti-dumping duty is no longer warranted, Article 11.2 states that “it shall be terminated immediately.”

Mexico argued that the United States breached this provision by failing to revoke the order when presented with positive evidence of changed circumstances by the two affected Mexican companies. For example, one company, TAMSA, had demonstrated in three prior administrative reviews that it was not dumping. However, under the DOC regulations, this is not sufficient to warrant revocation. Commerce requires that the company must also meet the additional requirement of having made sales in “commercial quantities” during the same period.

The United States took the position that Article 11.2 did not apply on a company-specific basis. However, the Panel concluded that it did not need to decide this issue. The Panel stated that U.S. law provided that an individual company had two possibilities to seek revocation of an order:

- If the company had not dumped for at least three years, and had made sales in commercial quantities during that period, it could request revocation of the order that was being applied to it. It could do so in the context of an annual administrative review; and
- It could also request revocation of an anti-dumping order as a whole, or as applied to itself, based on changed circumstances.

The Panel reasoned that if a request based on three years of no dumping and sales in commercial quantities during that time were the “only avenue available” to an interested party to obtain a review and possible revocation of a duty, it “might well conclude that application of those requirements, and a refusal to consider other evidence, leads to a

different conclusion regarding the consistency of USDOC's determination under Article 11.2." However, the Panel said that the decision not to consider revocation under the specific provision did not preclude a party from seeking revocation under the more general "changed circumstances" provision. Thus, the Panel concluded that "even assuming Mexico is correct is arguing that Article 11.2 requires company-specific revocation reviews, such reviews are provided for under U.S. law." The Panel said that given the availability of this "alternative" means to seek revocation, it was "not prepared to conclude that the USDOC determination at issue here is inconsistent with Article 11.2."

VI. GATT Publication Requirement

The Panel also dismissed a claim by Mexico that the application of the commercial quantities requirement in the DOC determination violated the obligation under Article X:2 of the GATT not to enforce a measure prior to its publication.

OUTLOOK

This decision is the latest in a series of WTO cases on the scope of the "sunset review" disciplines of the Anti-Dumping Agreement, one of the most critically-important areas of trade remedies. Under the Agreement, anti-dumping orders must expire - or "sunset" - within five years of their imposition. In certain limited circumstances, importing countries may extend the order beyond the scheduled expiration date, provided that they comply with the strict conditions set out in the Agreement to do so. An anti-dumping order can be extended only where the importing authorities determine that expiry of the duty would be "likely to lead to continuation or recurrence of dumping and injury."

In U.S. sunset reviews, the Department of Commerce invariably finds that dumping would be "likely" if the order were allowed to expire. Indeed, in *every* sunset review in which the U.S. industry has participated since entry into force of the WTO Agreement - a total of 232 sunset reviews - the DOC has found that dumping would be "likely."

In the 2004 case of *US - Argentina Sunset Review*, the Panel found that the U.S. Sunset Policy Bulletin, which mandates such a result, violated the obligations of the United States under the Agreement. The Appellate Body reversed this finding on the narrow ground that the Panel in that case had not conducted a so-called "qualitative analysis" of the prior sunset reviews to determine if the DOC regarded the Sunset Policy Bulletin as "determinative" or "conclusive." However, the Appellate Body stressed that it was not making a finding that the Bulletin was WTO-consistent. It warned that the criteria set out in Sunset Policy Bulletin appeared to be "mechanistically applied," and said that in another case, it may be possible to demonstrate that the DOC indeed regarded the Bulletin as determinative or conclusive.

The Panel in the present case picked up where *US - Argentina Sunset Review* left off. It conducted the "qualitative analysis" that the Appellate Body indicated was required, which it said revealed a "a clear picture." The *US - Mexico Sunset Review* Panel concluded that the DOC regarded the scenarios set out in the Sunset Policy Bulletin as determinative or conclusive, establishing an "irrebuttable presumption" of likely dumping. Thus, the relevant portions of the Sunset Policy Bulletin were found to be WTO-inconsistent as such.

This decision helps to restore the balance intended by the drafters of the Anti-Dumping Agreement between the right of importing Members to impose anti-dumping orders, and the right of exporting Members to insist on full compliance with the applicable requirements of the Agreement. The decision reinforces the principle that Members seeking to extend anti-dumping orders beyond the scheduled “sunset” date must comply with the meaningful and substantive disciplines of the Agreement.

For further information on this report, please contact Brendan McGivern in Geneva (bmcgivern@whitecase.com). Thank you.

Pascal Lamy Appointed as Next WTO Director General; Paris Mini-Ministerial Meeting Reaches Agreement on Key Agriculture Formulae

SUMMARY

The WTO General Council on May 26, 2005, approved former EU Trade Commissioner Pascal Lamy as the next WTO Director-General. Lamy will take office on September 1.

On May 3-4, 2005, ministers and senior trade officials from about 30 WTO Members gathered at a 'mini-ministerial' conference in Paris, France in an effort to move negotiations forward on the Doha Round. Participants reached a critical agreement on agriculture tariff formulae, which should help to clear the way for progress in other negotiations including non-agricultural market access ("NAMA"), services, trade facilitation and other issues.

ANALYSIS

I. Paris "Mini-Ministerial" Strikes Agreement on Critical Agriculture Formula

Ministers and senior trade officials from about thirty WTO Members attended a "mini-Ministerial" conference in Paris, France on May 3-4, 2005, in an effort to add political momentum to the Doha Round. The meeting reached an important breakthrough on the issue of agricultural ad valorem (tariff) equivalents ("AVEs"), which had threatened to stall progress in other areas of Doha negotiations. Participants at the conference agreed that by the end of July 2005, they would aim to define "approximations" on negotiating modalities for agriculture, NAMA and other issues.

Ministers also requested their trade negotiators to present them with draft "first approximations" of modalities by the next mini-Ministerial meeting in China, July 7-8.

Newly appointed U.S. Trade Representative Robert Portman said the deal would allow the Round to move forward "with some enthusiasm." In addition, many other trade ministers welcome the deal and were confident it would lend momentum to the Round.

A. Agriculture Primary Focus; Key Agreement Reached on Formula (AVEs)

Ministers and Senior Trade Officials in Paris reached an agreement on the conversion of specific agricultural tariffs, such as ten cents per pound, into *ad valorem* equivalents ("AVEs"), which are percentage-based tariffs (such as 10% of the value of the merchandise). This is a necessary first step for the development of a formula for reducing tariffs, especially among agricultural products. The lack of an agreement as to AVEs was a major obstacle to moving forward on market access negotiations for agricultural products.

The agreement was based on an EU proposal floated on May 4 at a meeting of the five interested parties (FIPS) the United States, EU, Brazil, India and Australia. The participating countries agreed to a mixed "weighting" of import prices and international market prices for determining import values on agricultural goods. The weighted average approach will lead to higher AVEs for commodities (and other products classified under chapters 1-16 of the Harmonized Tariff Schedule) than processed foods. Based on a formula

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

WTO Members agreed to last July 2004, the higher AVEs for commodities should eventually lead to deeper tariff cuts on these products.

In addition, the deal will apply a weighted average of the import prices reported by the governments to the WTO's Integrated Database – the approach favored by the EU and the G-10¹⁸ – and the generally lower international market prices in the United Nation's Comtrade database – the approach favored by farm exporters (United States, the Cairns Group and the G-20¹⁹). Among the goods that will be subject to the “mixed weighting” formula are bovine meats and processed foods.

This political deal was reached after the suspension of technical negotiations in Geneva two weeks earlier. Suspension of the technical discussions had raised serious concerns among WTO Members since this apparently technical issue could have become a major obstacle in the negotiating process. The next round of agricultural negotiations will begin on May 30 in Geneva.

B. Targets for Other Doha Negotiations

Besides agriculture discussions, ministers in Paris also identified areas in need of work between now and July:

- **Services benchmarks:** Consider “practical means” to assess quality of improved services offers expected starting at the end of May;
- **NAMA formulas:** Work towards “concrete shape” of formulas for tariff reductions, including a range of coefficients and the level of flexibility for developing countries;
- **Trade facilitation rules:** Define “scope and direction” of trade facilitation principles in preparation for text-based negotiations.
- **Development provisions:** Achieve progress on Special and Differential Treatment (“S&D”) provisions for developing countries.

C. And Then There Were Ten: Evolution of the Five Interested Parties (“FIPs”)

The Paris meeting witnessed the emergence of the “G-10” countries including Japan, Korea and Switzerland, which had previously been sidelined by the Five Interested Parties (“FIPs”) at previous ministerial gatherings. In fact, the EU official Mariann Fischer Boel suggested during the Paris meetings that the FIPs should be expanded to include members of the G-10, G-33 and G-90.

II. **Doha Round Negotiations Continue Substantive Work**

A. Agriculture: Chair Groser to Step Down

¹⁸ The “G-10” group includes Chinese Taipei, Iceland, Israel, Japan, Korea, Lichtenstein, Mauritius, Norway and Switzerland.

¹⁹ The “G-20” group includes Argentina, Bolivia, Brazil, Chile, China, Cuba, Egypt, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Philippines, South Africa, Thailand, Tanzania, Uruguay, Venezuela and Zimbabwe.

The Chairman of the Negotiating Group on Agriculture, Ambassador Tim Groser, is expected to relinquish the Chair this summer due to his departure as New Zealand's Representative to the WTO on May 23. Groser intends to return to New Zealand to run for Parliament. Ambassador Groser will chair the next meeting of the Negotiating Group on Agriculture, May 30 to June 3, but it is not clear whether and for how long he could continue as chairman after that. Since his personal contribution has been vital to the revival of the agriculture negotiations his departure from the chairmanship would create a serious vacuum, and would be greatly regretted.

WTO Members aim to establish outlines on "comprehensive and balanced" modalities on agriculture by the end of July. Members must still determine how many tiers there will be in the tariff reduction formula, and they also must decide how to define and then treat sensitive commodities that could receive special treatment.

B. Non-Agriculture Market Access (Industrial Goods): Growing Convergence Towards "Swiss Formula"

Despite limited attention to NAMA talks at the Paris meeting, there appears to be growing convergence of views towards some version of a "Swiss formula" that would result in deeper cuts in higher tariffs. Moreover, developing countries would be entitled to flexibilities in reducing tariffs on certain sensitive products. Nevertheless, there remain significant differences in the approaches favored by the U.S. and EU on the one hand, and India and Brazil on the other.

Based on a recent U.S. proposal, developing countries would be entitled to some flexibilities such as longer implementation periods with more favorable treatment under the Swiss formula than developed countries.

The recent Brazil and India proposal also supports use of a Swiss formula, but it uses a country's average tariff level as a variable, with the effect that countries with higher average bound tariffs including Brazil and India, would have to reduce their tariffs proportionately less. The Brazil and India paper has received little support since its introduction. Some Asian and Latin American countries have criticized the proposal, given that many already have lower average bound tariffs.

C. Services: Improved Offers by June; Struggle Over Benchmarks on Assessing Quality of Offers

Only some 20-30 Members are expected to table revised services offers by May 31, the agreed deadline for submission of improved offers. Among these, Canada tabled its revised offer on May 18. Canada's offer contains improvement in numerous sectors and on mobility of personnel, but not in the politically sensitive areas of social, health and education services. The United States, EU and others intend to submit their revised offer by late May.

Among the issues Members are grappling with is the establishment of benchmarks, possibly quantitative and qualitative, to measure improved offers. Some delegations are skeptical about such an approach given the difficulties over quantifying whether services offers have been improved. Chair of the Negotiating Group on Services Ambassador Alejandro Jara of Chile held a meeting on May 13, to discuss such an approach given the mandate of the Paris mini-Ministerial.

The United States has reportedly proposed six criteria to assess offers based on: (i) improvement upon existing commitments; (ii) inclusion of key sectors crucial to economic development; (iii) inclusion of core infrastructure-related services such as financial, telecom and energy services; (iv) whether they enhance the benefits of agriculture and industrial market access liberalization; (v) inclusion of commitments from the model schedules and proposals developed in friends groups; and (vi) creation of new commercial opportunities. Other Members also expect to contribute their views on establishing benchmarks.

The next “cluster” of meetings on services will take place June 20-July 1, and will provide delegations an opportunity to review new offers and encourage the tabling of additional revised offers.

D. Trade Facilitation: Technical Work Continues; More Technical Assistance Necessary

The Negotiating Group on Trade Facilitation held its latest round of meetings May 2-4, at which Members discussed several new proposals, including on GATT Article V (on freedom of transit), Article VIII (on fees and formalities), and Article X (on transparency).

Some Members including India, Kenya and the Philippines raised concerns about specific proposed measures falling within the scope of GATT Articles VIII and X. A group of Members including China and Pakistan proposed that as a first step, the needs and priorities of developing countries and least-developed countries as well as the existing level of trade facilitation in these countries should be assessed. This assessment should then be taken as a basis for the eventual establishment of relevant trade facilitation rules, the arrangement of special and differential treatment, and the provision of technical assistance and capacity building support. The African Group also called for the establishment of an appropriate mechanism to be agreed not later than July 2005, for the provision of technical assistance and support for capacity building during the negotiations.

The Chair of the Negotiating Group, Ambassador of Malaysia Muhamad Noor Yacob, announced that he would circulate a compilation of all proposals before the next meeting, June 13-14.

E. TRIPS: Implementation of Public Health Declaration Still Unresolved

The TRIPS Council is still attempting to implement the TRIPS and Public Health Declaration. WTO Members are attempting to reach agreement on an amendment to the TRIPS Agreement to improve developing countries’ access to generic drugs, but are unlikely to do so by the May 31 deadline. The next meeting of the Council in June 14-15 is expected to also take up the issue.

III. Former EU Trade Commissioner Lamy Appointed as Next WTO Director General

The WTO General Council on May 26 approved former EU Trade Commissioner Pascal Lamy as the next Director General starting September 1, 2005. Lamy emerged as the leading candidate after the third and final round of consultations led with great efficiency by the Chair of the General Council, Ambassador Amina Mohammed of Kenya and two facilitators, Ambassador Eirik Glenne of Norway and Ambassador Don Stephenson of

Canada. After the third round, it was apparent that the other final candidate, former Ambassador Carlos Perez del Castillo of Uruguay, did not have enough support. He therefore asked his government to withdraw his nomination. In other developments, U.S. Ambassador to the WTO Linnet Deily announced on May 9 that she would retire from her position, effective June 15.

OUTLOOK

The recent meeting in Paris added political momentum towards work necessary by July 2005, and the Hong Kong Ministerial Conference in December. Although much of the discussion was focused on agriculture market access and technical formulae for tariff conversions the agreement reached in Paris was essential to allow negotiations to move forward on agriculture, as well as on other issues including NAMA and services.

It is hoped that the breakthrough on agriculture will allow for greater convergence on formulae for NAMA based on a "Swiss formula" requiring deeper cuts in higher tariffs. Moreover, progress on agriculture should encourage some WTO Members to table revised and improved offers on services.

Some believe, however, that the Paris meetings have set too ambitious targets for the next mini-Ministerial in China, to be held in Qingdao on July 7-8. Among these targets, for example, the establishment of benchmarks for assessing the quality of services offers has proved to be a daunting task. It is obviously a more problematic business to assess the quality of services commitments than to apply the quantitative measures appropriate to goods liberalization. Moreover, it appears that many of the forthcoming services offers are likely to be disappointing. Offers on mode 4, the movement of personnel, will receive particular attention from developing countries.

There is considerable concern as to whether the July process, and the Hong Kong Ministerial itself, will produce the results which have been hoped for. Nevertheless, there is hope that preparations for Hong Kong will be galvanized by strong leadership, including that of the new USTR Robert Portman and the next Director General, Pascal Lamy. Mr. Lamy in particular is considered by many as the most energetic of the four candidates who campaigned for the office, and will do much to revitalize the WTO as an institution. It is clear that the next year will be the most challenging for the Doha negotiations since many see the deadline for the Round as the end of 2006.