

WHITE & CASE

LIMITED LIABILITY PARTNERSHIP

Japan External Trade Organization
WTO AND REGIONAL TRADE AGREEMENTS
MONTHLY REPORT

March 2006



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

GAO Reports Effects of Non-Market Methodology on AD Rates for Chinese Companies

A January 2006 report issued by the United States Government Accountability Office (GAO) shows that the Department of Commerce's (DOC) non-market economy (NME) methodology in calculating anti-dumping (AD) duties¹ has resulted in higher AD rates for China than if the country was labelled a market economy. Should DOC declare China a market economy, then the market economy AD methodology will greatly affect China. We review here the GAO's analysis of DOC's NME methodology and the potential impact of labelling China a market economy.

World Trade Organization Releases Trade Policy Review of United States

On February 15, 2006, the World Trade Organization (WTO) released its annual Trade Policy Review (TPR) of the United States. The report reviewed economic and trade policy developments, as well as import and export measures affecting U.S. trade. Overall, the report found that the United States experienced solid economic growth since its last Trade Policy Review in early 2004. The report noted incremental changes to U.S. trade policies, and found that market access barriers and distorting measures such as subsidies still persisted in a few but important areas. The WTO recommended that addressing these trade distortions would benefit U.S. consumers, taxpayers and the global economy. We review here the major points of the review.

¹ For legal precedent establishing China as a NME, see *Final Determination of Sales at Less than Fair Value: Natural Menthol from the People's Republic of China*, 46 Fed. Reg. 24,614 (Dep't Commerce May 1, 1981).

United States Highlights

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

- USTR Releases 2006 NTE Report on Foreign Trade Barriers
- United States, EU, Korea and Taiwan Agree to Eliminate Tariffs on Multi-Chip Circuits
- Grassley-Baucus Foreign Exchange Bill Targets Countries With “Fundamentally Misaligned” Currency
- USTR Requests ITC Investigation on U.S.-Malaysia FTA
- DOC Requests Comments on Non-Market Economy Antidumping Methodology
- Sen. Collins: Proposed GreenLane Legislation Would Strengthen Port Security
- Sens. Schumer, Graham to Meet with Chinese Officials on Currency Issues
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- House Approves Legislation on Permanent Normal Trade Relations with Ukraine
- USTR Releases 2006 Trade Policy Agenda
- EC Releases Annual Report on Obstacles in U.S.-EU Trade
- UAE Ports Company To Undergo Additional 45-Day Review of Transaction
- USTR Visits China on IPR, Plans Trip to Saudi Arabia To Discuss Arab League Boycott

Free Trade Agreements

U.S. Trade Policy Staff Committee Holds Public Hearing on U.S.-South Korea FTA

On March 14, 2006, the United States Trade Representative’s (USTR) Trade Policy Staff Committee (TPSC) held a public hearing on the United States-South Korea Free Trade Agreement (FTA). Government representatives from USTR, the United States International Trade Commission (USITC) and the Departments of Agriculture, Commerce, Labor, State, and Treasury were present to hear the **on-the-record** testimony from U.S. and Korean government officials and U.S. businesses on the FTA and its implications.

Update on U.S.-Latin American Free Trade Agreements (FTAs)

We provide below a brief update on the status of Free Trade Agreement (FTA) negotiations between the United States and several Latin American countries. Recent trade developments include progress in the ongoing round of FTA negotiations between the United States and Ecuador, possible Dominican Republic- Central American Free Trade Agreement (DR-CAFTA) implementation by Honduras and Nicaragua, and lack of progress in U.S.-Panama FTA talks.

Free Trade Agreements Highlights

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

- U.S.-SACU Talks to Continue in April
- U.S.-Egypt Hold “Low-Key” Talks on Potentially Re-launching FTA
- House Ways and Means to Hold U.S.-Oman FTA Hearing
- U.S. and UAE Schedule Trade Talks for Week of March 20; FTA Negotiations to Resume in Late April
- U.S.-South Korea FTA Talks Moving Quickly
- United States and United Arab Emirates (UAE) Postpone FTA Talks
- Bush Administration: Congressional Concerns Delay Initiation of US-Egypt FTA Talks
- State Department Report Warns on Labor Rights Problems in Peru
- U.S. Announces Initiation of Formal FTA Talks with Malaysia
- U.S. and Australia Meet for Annual FTA Review
- Senate Finance Subcommittee Holds Hearing on U.S.-Oman FTA
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- USTR: Progress in Russia WTO Accession Talks But Russia Must Fix IPR Enforcement, Customs Regulations

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- U.S., EU Request Consultations with China on Auto Regulations
- Little Movement in WTO Agriculture Talks
- U.S. Grants Permanent Normal Trade Relations to Ukraine, Paving Way for WTO Accession
- Russia's Bilateral Negotiations for WTO Accession Progressing; Multilateral Negotiations Require "Intensification" of Russian Efforts
- NAMA Meetings Produce Little Movement; Portman Criticizes "Minority" of EU Members For Holding Up Doha Round
- Latest U.S.-Russia WTO Accession Negotiations Have a "Positive Start," But Many Issues Remain Unresolved
- WTO Trade Policy Review: China Provides Little Information on Subsidies
- WTO Trade Policy Review: U.S. Economy is "Key Engine of Global Growth"
- G-6 London Meeting Results in No Significant Progress
- USTR: April 30 is 'Drop Dead Date' For WTO Talks
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- WTO Members Begin Circulating Services Plurilateral Requests

REPORTS IN DETAIL

UNITED STATES

GAO Reports Effects of Non-Market Methodology on AD Rates for Chinese Companies

SUMMARY

A January 2006 report issued by the United States Government Accountability Office (GAO) shows that the Department of Commerce's (DOC) non-market economy (NME) methodology in calculating anti-dumping (AD) duties² has resulted in higher AD rates for China than if the country was labelled a market economy. Should DOC declare China a market economy, then the market economy AD methodology will greatly affect China. We review here the GAO's analysis of DOC's NME methodology and the potential impact of labelling China a market economy.

ANALYSIS

I. Background

Under the United States' AD law, U.S. companies can petition the government and receive relief from competing imports if foreign producers sell such products in the U.S. market at prices lower than prices charged in the exporter's market or lower than the cost of production. DOC establishes AD rates by comparing the imported product's "normal value" (NV) with its export price upon entering the U.S. market. DOC calculates NV in one of two ways: (1) using the current prices charged in the exporter's home market and, if the product is not sold in the home market, then a substitute market that sells the product; or (2) by constructing a proxy normal value based on costs of production in the exporting country, taking into account selling, general and administrative expenses along with a reasonable profit margin.

Since 1981, DOC has employed a special methodology in AD cases against China and other NMEs.³ This methodology differs from the market economy approach to avoid price distortions caused by a centrally planned economy. First, DOC uses price information from a "surrogate country" to construct NV. China's surrogate country has typically been India because it is a market economy that shares many production features similar to China. Second, AD respondents in NME economies must satisfy certain DOC criteria if they want to be eligible for individual, rather than government-wide, rates. This procedure allows the respondents the

² For legal precedent establishing China as a NME, see *Final Determination of Sales at Less than Fair Value: Natural Menthol from the People's Republic of China*, 46 Fed. Reg. 24,614 (Dep't Commerce May 1, 1981).

³ Under 19 USC § 1677 (18), U.S. law defines an NME as a country that does not follow market principles "so that. . . sales of (the) merchandise in such country do not reflect the fair value of the merchandise." DOC currently classifies countries as NMEs.

opportunity to submit company-specific information to DOC that will produce an accurate NV and, most likely, a lower AD rate.

II. Current Trends Under NME Methodology in AD Cases Against China

According to the GAO report, the U.S. government has initiated more AD actions against China than any other country. In a comparison of the AD rates on 25 products from China versus the rates for such products from market economy countries between 1985 and 2004, GAO found several trends. First, the average AD rate for China was 61 percent higher than the average rate for market economy nations. Second, the average AD rate for Chinese respondents receiving company-specific margins was 2% lower than the average rate for companies in market economies.

GAO reports that an increasing number of Chinese companies have used the individual rates approach to receive lower dumping margins. For a company to receive a company-specific rate, it must prove to DOC that the company is free from government control both legally and factually. GAO concluded that a discrepancy has emerged between the AD rates for Chinese AD respondents under the countrywide approach and the company-specific AD rates for other Chinese companies in the same investigation. Perhaps because of this discrepancy, more Chinese companies are requesting the calculation of individual margins.

III. Future Trends Should NME Approach Be Eliminated

The GAO report states that DOC has the administrative authority to re-label China as a market economy. Should DOC choose to do so, several changes should occur. First, the high countrywide rates will be eliminated, as DOC will no longer need to use information from a surrogate country to construct NV. This will have a great impact on some products frequently targeted by AD duty orders, such as chemicals, plastics, metal products, and agricultural goods.

Second, Chinese companies will automatically be eligible for individual rates. This does not mean, however, that all companies will be guaranteed lower AD rates or even that they will receive individual margins. DOC has the statutory authority to use a statistically valid sample of respondents in cases where it is “not practicable” to make individual margin calculations for all AD respondents.⁴ Moreover, the size of the margin itself will depend on the quality of cooperation that the company engages with DOC in constructing the NV of the product under investigation. DOC has the right to apply adverse inferences in its construction of NV should a company fail to cooperate. These adverse inferences can come from information provided by the domestic industry representatives petitioning for import relief or from prior cases. Thus, individually determined rates will vary according to the level of cooperation companies are willing to commit towards investigating officials in DOC.

Third, AD rates may grow according to certain product line and companies instead countrywide. The impact of using Chinese price information would depend on whether the

⁴ See, 19 U.S.C. § 1677-f-1(c).

industry input prices are truly reflective of a market economy or one still highly influenced by government planning.

OUTLOOK

DOC has reported that Chinese officials have yet to officially request for a reclassification of the Chinese economy under current US law.⁵ In April 2004, the United States and China formed a Structural Issues Working Group to examine operational and structural issues that may cause bilateral trade frictions. Among the issues was China's desire to be reclassified as a market economy. The working group has met in July 2004 and May 2005. Whether a reclassification is on the horizon is uncertain, but the GAO report concludes that as the volume of trade has grown, more Chinese companies have requested and been granted individually tailored AD rates. Thus, the impact of the NME methodology on trade flows has lessened since the early 1980s and actually now favors Chinese companies receiving company-specific rates compared to their market economy counterparts. A DOC market economy designation for China, however, could still affect AD duties on the imports of all Chinese companies that receive countrywide rates and could, therefore, lead to lower overall duties on Chinese imports. Because of this, it is likely that the domestic industries that benefit from the application of NME-based AD rates on directly competitive Chinese imports (*i.e.*, chemical, plastics, metals, and agricultural producers) would lobby DOC to resist any move to designate China a market economy. On the other hand, U.S. producers and consumers that would benefit from cheaper Chinese imports may counterbalance any such lobbying effort.

⁵ DOC's criteria for a market-oriented industry consists of 3 elements: (1) virtually no government interference in setting prices or amounts of production; (2) industry with private or collective (but not state) ownership; and (3) market-determined prices for all significant inputs both materially and non-materially (*i.e.* labour and overhead).

World Trade Organization Releases Trade Policy Review of United States

SUMMARY

On February 15, 2006, the World Trade Organization (WTO) released its annual Trade Policy Review (TPR) of the United States. The report reviewed economic and trade policy developments, as well as import and export measures affecting U.S. trade. Overall, the report found that the United States experienced solid economic growth since its last Trade Policy Review in early 2004. The report noted incremental changes to U.S. trade policies, and found that market access barriers and distorting measures such as subsidies still persisted in a few but important areas. The WTO recommended that addressing these trade distortions would benefit U.S. consumers, taxpayers and the global economy. We review here the major points of the review.

ANALYSIS

On February 15, 2006, the WTO released its annual TPR of the United States. The report reviewed economic and trade policy developments, as well as import and export measures affecting U.S. trade. The WTO's TPR reports cover trade in goods and services, investment and intellectual property and are an integral part of the organization's Trade Policy Review Mechanism (TPRM) – one of the WTO's basic functions. The TPRM's objectives include "facilitating the smooth functioning of the multilateral trading system by enhancing the transparency of Members' trade policies." All WTO Members are subject to review under the TPRM. WTO rules mandate that the four Members with the largest shares of world trade (currently the EU, the United States, Japan and Canada) be reviewed every two years; the next 16 be reviewed every four years; and others be reviewed each six years. A longer period may be fixed for least-developed country Members. The United States' latest TPR analyzed most facets of the U.S. economy and trading regime, including:

- **Recent economic developments.** The TPR indicated that U.S. economic growth has been strong and steady since the WTO last reviewed the United States in 2004. Strong private domestic consumption, private investment and defense purchases accelerated economic expansion in the second quarter of 2003. Expansion solidified in 2004 with 4.7 percent GDP growth due to productivity gains, high corporate profits and expanding exports. The report showed a slower GDP growth in 2005 at about 3.8 percent. The report noted, however, that this growth rate is expected to outpace that of other developed countries and suggested that U.S. economic growth has been supported by "accommodative monetary and fiscal policies." The report did, however, highlight the federal government deficit, reaching its peak of 4.6 percent of GDP in 2004. It also noted that it would be important for the United States to reduce public sector absorption to maintain its largely open market by "pre-empting possible protectionist sentiment."

Trade policy developments:

- **Policy objectives:** According the report, the United States Trade Representative (USTR) continues “to pursue a policy of advancing open markets and the rule of law as part of a broader global security objective.” As the United States considers liberalization of markets beneficial for both the U.S. and the global market, its international trade negotiation objectives continue to include the removal of trade barriers and the extension of the rules-based trading system. The United States, therefore, actively pursues a strategy of trade liberalization through negotiations at the multilateral, regional, and bilateral levels.
- **Legislative developments:** The report also highlighted the Administration’s view that the Bipartisan Trade Promotion Authority Act of 2002 (TPA) is an important instrument to attain its trade objectives. TPA grants trade promotion authority to the Executive Branch and is expected to expire on July 1, 2006. The report confirmed that the Administration is working hard to sign any new trade agreements under TPA before April 1, 2007.
- **WTO participation:** The report stated that the United States is one of the key participants in all areas of WTO activities. Multilateral trade negotiations are an Administration priority, especially the successful completion of the Doha Development Agenda by the end of 2006. The report stated that the United States has made progress in implementing certain WTO rulings such as in the anti-dumping provision of the Revenue Act of 1916 (United States- Antidumping Act of 1916 Dispute Settlement Panel, August 28, 2000, WTO/DS 136).
- **Free trade agreements:** The report noted that the Administration concluded fifteen free trade agreements (FTAs) between 2001 and late 2005 including Jordan, Chile, and Australia. As of January 2006, 12 other agreements are under negotiation. The Bush Administration considers FTAs “a step toward multilateral liberalization.” The report also highlighted the Generalized System of Preferences (GSP) program, through which the United States grants unilateral preferences to exports from developing countries. In February 2005, the United States requested and granted waivers in the WTO for the African Growth Opportunity Act (AGOA), Andean Trade Preferences Act (ATPA), and Caribbean Basin Economic Recovery Act (CBERA).

Trade policies by measure:

- **Tariffs:** The report stated that the United States grants Most Favored Nation (MFN) tariff treatment to all WTO Members except for Cuba and North

Korea. Based on the 2004 Harmonized Tariff Schedule of the United States, the simple average applied MFN tariff rate in 2005 was 4.2 percent, a decline from 2002. The average applied tariff rate for agriculture in 2004 was 9.7 percent, unchanged from 2002. For those developing countries who receive unilateral preferential tariff treatment, the simple average tariff on imports from GSP countries was 2.6 percent in 2004. During 2004-2005, Algeria, Iraq and Serbia and Montenegro became GSP beneficiary countries. Additional tariff preferences became effective due to new free trade agreements with Australia, Chile and Singapore.

- **Safeguards:** The report noted that the United States applied transitional safeguards on certain textiles and clothing products from China. The United States and China reached an agreement in November 2005 to limit Chinese exports of textiles and clothing products to the United States from 2006 through 2008. Also, in June 2005, 247 anti-dumping measures were in force, affecting iron, steel, chemicals, pharmaceuticals, agricultural, and forestry products. In turn, U.S. exporters are the target of about 55 anti-dumping measures imposed by other countries.
- **Subsidies:** The report noted that the United States notified the WTO that 45 federal and 330 sub-federal programs provided subsidies in 2003, and that the agriculture and technology sectors received the largest subsidies in 2005.

Trade Policy by Sectors

- **Agriculture:** As one of the world's largest producers, exporters and importers of agricultural products, the United States and its agricultural policies have affected WTO negotiations. In 2004, the average MFN applied tariff rate for agriculture was 9.7 percent. Reported government subsidies to domestic farmers dramatically fell from 48 percent to 16 percent in 2004. The Farm Security and Rural Investment Act of 2002 allows the government to loan program payments, and ad hoc emergency payments continue to supplement crop insurance.
- **Financial services:** According to the report, the financial sector is growing at one of the fastest rates in the U.S. economy. The report stated that there have been only minor changes in U.S. legislation regarding financial service sectors since 2004. In the United States, foreign banks usually receive the same treatment as domestic banks. A new rating system (effective January 1, 2005) enhances the supervision of financial conglomerates by emphasizing risk management and more comprehensive framework for analyzing and rating financial factors.

OUTLOOK

Other than limited “trade distorting” market access barriers and subsidies, the United States has not changed its trade regime significantly since its last TPR review in 2004. The report’s analysis of U.S. bilateral and multilateral negotiations reveals the WTO’s concerns that U.S. focus on bilateral trade agreements could hinder its involvement in the WTO’s Doha Round of multilateral negotiations. Specifically, the WTO suspects that United States’ aggressive pursuit of bilateral FTAs shifts its focus and finite resources away from multilateral trade negotiations, thereby slowing their pace and efficacy. Although many U.S. businesses, consumer groups, and trade associations share this concern, it is unlikely that the United States will alter its strategy. First, the United States has consistently maintained that bilateral FTA negotiations do not distract or interfere with its multilateral trade objectives. Moreover, the Bush Administration believes that its “competitive liberalization” strategy – whereby the United States will pursue multiple bilateral FTAs to motivate its trading partners to pursue broader market liberalization at the bilateral, regional and multilateral levels – has proven highly successful. Because of this belief, the U.S. government would be reluctant to alter its “winning” game plan.

United States Highlights

USTR Releases 2006 NTE Report on Foreign Trade Barriers

On March 31, 2006, the United States Trade Representative (USTR) published its 2006 National Trade Estimate (NTE) Report on Foreign Trade Barriers. The annual report, as required by the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Trade Act), is an inventory of the most significant foreign barriers to: (i) U.S. exports of goods and services, (ii) foreign direct investment by U.S. persons, and (iii) protection of intellectual property rights (IPR). The report provides, where feasible, quantitative estimates of the foreign practices' impact on the value of U.S. exports. Information is also included on actions taken to eliminate trade barriers. The 2006 NTE report "classifies foreign trade barriers into ten different categories, covering all governmental measures and policies, whether consistent or inconsistent with international trading rules, that restrict, prevent, or impede the international exchange of goods and services." These categories include:

- Import policies;
- Standards, testing, labeling, and certification;
- Government procurement;
- Export subsidies;
- Lack of intellectual property protection;
- Services barriers;
- Investment barriers;
- Anticompetitive practices with trade effects tolerated by foreign governments;
- Trade restrictions affecting electronic commerce; and
- Other barriers.

The report examines the trade practices of 63 countries and regional customs unions that represent the largest export markets for the United States.

United States, EU, Korea and Taiwan Agree to Eliminate Tariffs on Multi-Chip Circuits

The United States has signed an agreement with the EU, South Korea and Taiwan that would eliminate customs duties on imports of multi-chip integrated circuits (MCPs). Each

country is working through domestic approval procedures, and the agreement is expected to take effect on April 1, 2006. Japan is expected to sign the agreement by the end of 2006, although it already applies zero duties on MCPs. The agreement will eliminate customs duties and other charges on MCPs among major semiconductor trading nations and territories. MCPs are semiconductors used in devices where miniaturization is desirable, such as cell phones, digital cameras and personal digital assistants (PDAs). U.S. companies account for over 50 percent of global MCP production, worth over \$4 billion in 2004, and the United States is a leading MCP exporter.

Grassley-Baucus Foreign Exchange Bill Targets Countries With “Fundamentally Misaligned” Currency

On March 28, 2006, chairman of the Senate Finance Committee Sen. Charles Grassley (R-IO) and Ranking Committee Member Max Baucus (D-MT) introduced the “U.S. Trade Enhancement Act of 2006” that “would overhaul U.S. policy on foreign currency exchange rates and strengthen U.S. trade enforcement efforts” by targeting the potentially distortive currency practices of China and other nations. Under the bill, the U.S. Treasury Department would list countries with "fundamentally misaligned" currencies that have "a material adverse impact" on the U.S. economy. The legislation defines "fundamental misalignment" as "a material, sustained disparity between the observed levels of an effective exchange rate for a currency and the corresponding levels of an effective exchange rate... that would be consistent with fundamental macroeconomic conditions based on a generally accepted economic rationale."

The bill also outlines steps that the U.S. Congress can take if a country with a "misaligned currency" refuses to negotiate or refuses to "adopt appropriate policies to eliminate" the misalignment following negotiations. These steps include authorizing the U.S. Treasury Department to: (i) deny that country new financing by the U.S. Overseas Private Investment Corporation (OPIC); (ii) oppose any new financing by multilateral banks, such as the Asian Development Bank; (iii) request that the International Monetary Fund (IMF) consult with the government in question; and (iv) retain non-market economy status (NME) for a country with a misaligned currency.

The legislation would also make General Counsel to the Office of the United States Trade Representative (USTR) a Senate-approved position the "principal function" of which is to enforce U.S. trading partners' compliance with trade agreements. The bill would establish a Trade Enforcement Working Group, chaired by the General Counsel and other representatives from the Departments of Commerce, State, Treasury, Agriculture, and other agencies as chosen by USTR. Under the bill, USTR would be required to identify "priority foreign country trade practices" that would be the focus of USTR's trade enforcement efforts 90 days after completing its annual National Trade Estimate Report on Foreign Trade Barriers (NTE). USTR would also be required to report annually to Congress on its priorities and the on trade enforcement actions it took in the preceding year. In addition, the legislation creates a consultation process between USTR's General Counsel and the House Ways and Means and Senate Finance Committees prior to the release of the report on priority foreign country trade practices. Finally, the legislation

would eliminate the "new shipper bonding privilege" from U.S. trade remedy law and would also create a new Assistant Secretary of the Treasury position that would focus on currency exchange rate issues.

Introducing the legislation, Sen. Grassley stated that the United States needs "a good system in place with real teeth and hard triggers for action when [U.S.] trading partners haven't lived up to their end of the bargain." Sources indicate that there is no timeline yet for Senate consideration of the bill. The legislation is not the first in 2006 to address China's alleged currency manipulation; Senators Charles Schumer (D-NY) and Lindsey Graham (R-SC) have postponed several times the deadline for a vote on their bill (S. 295) "that would assess a 27.5 percent tariff on all Chinese imports" if China does not address its alleged currency manipulation. Sources indicated that that bill would have passed the Senate, despite its likely WTO-inconsistency and vocal opposition from U.S. businesses and consumers. The Grassley-Baucus bill, however, will likely remove much of the congressional support for the Schumer bill, as it sends a tough message to China and other possible "currency manipulators" but does so in a way that is compatible with Bush Administration policy (notably that currency issues are Treasury's sole domain) and likely with WTO rules, as well. However, regardless of which currency bill, if any, that Congress eventually passes, Chinese officials have continuously stated that they will revalue their currency at their own pace and not under U.S. pressure.

USTR Requests ITC Investigation on U.S.-Malaysia FTA

On March 27, 2006, the U.S. International Trade Commission (ITC) announced that it seeks public comment on its investigation into the probable economic effect of a U.S. Free Trade Agreement (FTA) with Malaysia. The Office of the United States Trade Representative (USTR) requested the investigation on March 17, 2006 as part of the U.S. government's standard procedures following the initiation of formal bilateral FTA negotiations. The ITC will advise the President as to the "probable economic effect of providing duty-free treatment for imports of products of Malaysia on industries in the United States producing like or directly competitive articles and on consumers" and expects to submit its confidential report to USTR by June 30, 2006.

The ITC will hold a public hearing in connection with the investigation on April 19, 2006 and any interested party wishing to appear at the hearing should file its request with the Secretary of the U.S. International Trade Commission no later than 5:15 p.m. on April 4, 2006. The ITC also requests written submissions for the record, which interested parties should address to the Secretary of the Commission and submit no later than 5:15 p.m. on April 25, 2006.

DOC Requests Comments on Non-Market Economy Antidumping Methodology

The Department of Commerce (DOC) is considering amending its regulations regarding the use of market economy inputs when calculating "normal value" in antidumping proceedings involving non-market economy (NME) countries. In present antidumping proceedings involving NME countries, DOC calculates normal value by valuing the NME producers' factors of production (*i.e.*, the inputs necessary to produce the merchandise under investigation), using

prices from a surrogate market economy at a comparable level of economic development that is also a significant producer of comparable merchandise. DOC's proposals would affect its antidumping methodology in those cases where an NME producer sources a particular input both domestically and from a market economy.

The full text of DOC's Federal Register Notice requesting comment, 71 Fed. Reg. 14,176 (March 21, 2006) states that interested parties must submit comments to David Spooner, Assistant Secretary for Import Administration at DOC no later than April 19, 2006.

Sen. Collins: Proposed GreenLane Legislation Would Strengthen Port Security

Senator Susan Collins (R-ME) has stated that U.S. cargo security programs "are flawed in their implementation" and could be strengthened by additional funding by the GreenLane Maritime Security Act (S. 2008). Speaking at a March 21, 2006 conference on port security, Collins, chair of the Senate Homeland Security Committee, stated that programs like the Container Security Initiative (CSI) and the Customs-Trade Partnership on Terrorism (C-TPAT) need "beefing up," and that the GreenLane legislation would "do just that" by requiring the Department of Homeland Security to "conduct robust security assessments for ports interested in participating in CSI." Under the CSI program, U.S. customs officials work with foreign customs agencies to prescreen ocean cargo containers before shipment to the United States. The proposed legislation would also affect C-TPAT, a government-industry partnership geared to ensure global supply chain security in which participants agree to establish a security measures subject to Customs validation in exchange for benefits such as expedited Customs clearance. The legislation would establish standards for participation in the program and create tiered categories for participants, depending on the number of security measures they adopt. The bill would also provide more funding for port security measures.

Sources indicate that the House is close to passing its version of the Senate GreenLane bill, known as the Security and Accountability for Every Port Act (SAFE) (H.R. 4954). Reps. Dan Lungren (R-CA) and Jane Harman (D-CA) on March 14 introduced the bill, which closely mirrors the Senate version and includes funding to improve the Automated Targeting System, a system that identifies "high-risk" containers before they reach U.S. ports. The Senate Homeland Security and Governmental Affairs Committee will likely hold a hearing on April 5, 2006 to discuss the proposed Senate GreenLane legislation. The bills follow President Bush's 2007 budget, in which he requested \$7.8 billion to fund the Bureau of Customs and Border Protection (CBP). The budget request includes support for CBP's antiterrorism initiatives that include CSI and C-TPAT. CBP is also exploring "second-generation" cargo security measures meant to improve "first-generation" measures implemented after the September 11, 2001 terrorist attacks. The Administration's budget request reflects the President's national security and immigration policy, as well as CBP's plans for growth.

Sens. Schumer, Graham to Meet with Chinese Officials on Currency Issues

Senators Charles Schumer (D-NY) and Lindsey Graham (R-SC) are scheduled to meet with Chinese officials in China during the week of March 20, 2006, to discuss the country's

currency policy and other unresolved trade issues. Unless China agrees to revalue or unpeg its currency, the two Senators have indicated that they will seek a vote on U.S. legislation that they have sponsored which would impose a 27.5 percent tariff on all imports from China. In a 2005 compromise with Congressional leadership, Schumer and Graham ceased their demands for an immediate vote on the legislation, provided that it would occur before March 31, 2006. The Senators, however, have agreed to one more meeting before they decide whether to send the legislation to the Senate floor.

The Senators also delayed a vote in July 2005 after Treasury Secretary Snow assured them that China would allow its exchange rate to float. China did allow a moderate float but announced that it was moving to a “managed” floating currency regime. At that time, China revalued the yuan by 2.1 percent against the dollar, and Chinese officials indicated that they expected the revaluation to lead to an increase in the yuan’s value yuan by 0.3 percent per day. Thus far, the yuan has increased by only 0.91 percent, to 8.038 per dollar.

Schumer has stated that he is “disappointed in the steps that [China has] taken so far.” He and other supporters of the currency legislation believe that China’s currency policy leads to a skewed bilateral trade balance, as U.S. exports to China are “more expensive” while Chinese products are “cheaper” in the United States. Although, Senators Schumer and Graham are confident they have enough votes for the bill to pass, U.S. businesses and Congressional opponents have indicated that the bill is inconsistent with the United States’ (WTO) obligations and would have a detrimental impact on U.S. businesses that rely on cheap Chinese inputs. Consumer groups have also denounced the legislation as causing substantial price increases for many basic consumer goods, such as clothing, footwear and appliances. Should the Schumer/Graham legislation make it to the Senate floor, it is likely that these groups will launch an aggressive lobbying campaign in an effort to defeat the measure. It is also likely that the Bush Administration will vocally oppose the measure, but a Presidential veto is uncertain, considering that President Bush has never utilized his veto power in over six years in office.

Alabama Cow Tests Positive for Mad Cow Disease

The Department of Agriculture confirmed March 13 that a cow in Alabama tested positive for bovine spongiform encephalopathy (BSE or “mad cow disease”), - the third U.S. cow found with the disease in the past 27 months. Following the announcement of the Alabama BSE case, U.S. Department of Agriculture Chief Veterinarian John Clifford assured the public that it is still safe to consume U.S. beef and discussed current and future surveillance measures. "I want to emphasize that human and animal health in the United States are protected by a system of interlocking safeguards, and that we remain very confident in the safety of U.S. beef," he stated. Regarding surveillance, Clifford noted that “we will continue to base our maintenance surveillance testing on international guidelines. Though the nature and extent of maintenance surveillance has not yet been finalized, the incidence of BSE in the country remains extremely low and our interlocking safeguards are working to protect both human and animal health and we remain very confident in the safety of U.S. beef.”

In January 2006, Japan blocked the entry of an estimated 2000 tons of U.S. beef when it discovered packages that contained spinal bones. Japan agreed to resume only the importation of U.S. beef without spinal bones, as the bones are a “risk material” that could contain BSE. The United States has also encountered problems with several current and future free trade agreement (FTA) partners – including South Korea, Columbia, Panama, and parties to the Dominican Republic – Central American Free Trade Agreement (DR-CAFTA) – related to the importation of U.S. beef and the equivalency of the U.S. meat inspection system. It is likely that the latest American outbreak of BSE will further hinder the United States’ efforts to open (or, in some cases, to re-open) foreign markets to U.S. beef.

Russia Plans to Limit Foreign Investment in Move Seen as Threat to Trade Climate

On March 2, 2006, Russian Economic Development and Trade Minister German Gref said in a Cabinet meeting that the Russian government plans to restrict foreign investment in 39 “strategic sectors” related to the production of weapons, military hardware, and nuclear materials, as well as the construction of nuclear facilities. Under this plan, all foreign investors must receive special government permission to acquire a controlling stake in a Russian enterprise. The government has no plan to limit investment in natural resources sectors such as oil and minerals. Although Russia’s ministers are still considering the legislation, it is expected to be released within a week.

Under the proposed legislation, government permission would be required if (i) foreign investors control 51 percent of the legal entity; (ii) the parent company controls 51 percent of the legal entity; and (iii) grounds exist to suggest that the company acts in the interests of foreigners. The draft law limits, therefore, access to strategic sectors for both foreign and domestic enterprises. In addition, the purchase of more than 25 percent of the stock in a Russian company on the strategic sectors list will be prohibited, and the government can potentially block any purchase.

Although many Western analysts call the move a serious threat to Russia’s investment climate, some view the Russian government’s control over strategic sectors as a positive, in that it provides more transparency and clearer rules. Experts further note that other countries – including France, Spain, Australia, Finland, and the United States - restrict foreign investment in certain sectors. Gref stated that Russia’s draft law is “more liberal” than existing laws in other countries. Regardless, many economists fear that the administration will expand the list of strategic sectors as the bill develops, and their fears may be well-founded. On March 6, Russian President Vladimir Putin ordered that Moscow’s Ostankino television center, Russia’s main television-transmitting facility, be placed on the list of strategic enterprises. Moreover, the legislation comes as Russia attempts to conclude bilateral negotiations with the United States, so that Russia can join the World Trade Organization. The U.S. agreement is the only bilateral left unresolved, and foreign investment restrictions have been a key sticking point. Russia’s draft investment legislation will do little to assuage U.S. concerns.

House Approves Legislation on Permanent Normal Trade Relations with Ukraine

On March 8, 2006 the United States House of Representatives voted 417-2 to approve legislation (H.R.1053) granting Ukraine permanent normal trade relations (PNTR) status. The Senate approved similar legislation (S.632) in November 2005, but must now approve the House version because revenue measures must originate in the House. The Administration has indicated that the President will sign the bill into law.

Many welcomed the House vote, applauding Ukraine recent political and economic reforms. United States Trade Representative (USTR) Rob Portman stated that the legislation “sends a positive and strong signal to our Ukrainian partners who have instituted reforms that increase transparency, provide greater intellectual property protections and stronger enforcement of the rule of law.” Rep. Bill Thomas (R-CA), chairman of the House Ways and Means Committee, commented, “We are asking today, in this legislation, to recognize that the country of Ukraine has reached the point of integrating itself into the world economy. ”The State Department’s latest annual report on human rights, released March 8, stated that there have been “notable improvements” in Ukraine’s human rights performance.

The United States and Ukraine on March 6, 2006 signed a bilateral market access agreement as part of Ukraine’s accession to the World Trade Organization. Ukraine has been negotiating the terms of accession to World Trade Organization (WTO) since 1994 and must complete bilateral accession agreements with eight remaining countries before it can join the multilateral trading body. The U.S. Congressional vote is necessary to terminate application of “Jackson-Vanik,” which withholds PNTR from former and current communist countries. Under WTO rules, however, the United States must grant Ukraine PNTR before it can benefit from the increased access to Ukraine’s market that its WTO accession will provide.

USTR Releases 2006 Trade Policy Agenda

On March 1, 2006, the Bush Administration delivered its **2006 Trade Policy Agenda** and the **2005 Annual Report of the President of the United States on the Trade Agreements Program** to Congress. The 2006 Trade Policy Agenda highlights the benefits of trade for U.S. businesses, farmers and ranchers, service providers and consumers and describes the 2006 trade agenda. The 2005 Annual Report on the Trade Agreements Program reviews the Administration’s 2005 trade accomplishments.

United States Trade Representative (USTR) Rob Portman stated that “in 2006, the Administration is committed to creating new momentum for a bipartisan consensus to open markets and knock down barriers to trade around the world” and noted that the Administration would work in partnership with Congress in “promoting an aggressive and proactive [trade] agenda.” According to the report, one of the top priorities of the 2006 trade agenda is the conclusion of the World Trade Organization’s (WTO) Doha Round by the end of the year. Portman stated that “the potential benefits from the successful Doha Round for the United States and its trading partners, especially in the developing nations, are enormous, and [the United States] will continue to do all [it] can to achieve a successful result.” Portman also emphasized

the importance of successfully concluding bilateral and regional agreements in 2006 and noted that trade rules must be fair and aggressively enforced, stating that “the Administration will continue to use all available tools to ensure that [U.S.] trading partners live up to their obligations as WTO Members and FTA partners.” Portman highlighted “the emergence of China as a global power” and stated that USTR would work with Congress, other government agencies and the private sector on proposals to better monitor and enforce China’s compliance with its obligations as a WTO member.

In reviewing 2005 trade developments, Portman highlighted “the ambitious U.S. proposals” during WTO negotiations at the December 2005 Hong Kong Ministerial Conference. He also stated that “recently-concluded FTA negotiations with Peru, Colombia and Oman, along with ongoing negotiations with Ecuador, the Southern African Customs Union (SACU), Panama, Thailand, and the United Arab Emirates, could result in new market opportunities in countries with which two-way trade is more than \$66 billion” and noted that “with the launch of FTA talks with the Republic of Korea and other major trading partners possible this year, the United States could tap the vast potential of improved ties to markets with which it already has a strong trade relationship.” Portman stated that 2005 was also a big year for President Bush’s United States-Middle East Free Trade Area (USMEFTA) initiative, noting that “the FTA with Morocco went into effect on January 1, 2006” and that “in January, the President signed legislation to implement an agreement with Bahrain, and the United States and Oman formally signed the FTA concluded in the fall of 2005.” He stated that 2005 “opened with significant movement toward making the USMEFTA a reality.”

EC Releases Annual Report on Obstacles in U.S.-EU Trade

On March 1, 2006, the European Commission (EC) released its annual report on barriers to trade and investment in the United States. The report lists the obstacles that EU exporters and investors face in the U.S. market and also highlights non-tariff barriers (NTBs) in investment and public procurement. The report details World Trade Organization (WTO) problems including the repeal of the Continued Dumping and Subsidies Offset Act (CDSOA, or the “Byrd amendment”).

The report states that NTBs “are now the major obstacle to increased EU-U.S. trade” and that “barriers to free and fair government procurement” remain problematic. The report also states that “U.S. restrictions remain, notably in the shipping, energy and telecoms areas” and that “these problems are often compounded by the plethora of different state level laws and regulations which make overcoming U.S. barriers a very complex operation.” The report does note that the United States and the EU are simultaneously withdrawing government procurement sanctions and that the U.S. Congress’s December 2005 repeal of the Byrd amendment “has already been welcomed by the Commission, with EU sanctions now being reduced in tandem with remaining Byrd payments.”

According to the report, the United States is still failing to comply with a number of WTO dispute settlement findings. The report states that “the repeal of the U.S. FSC/ETI export-

contingent tax scheme includes transitional and grandfathering provisions which have been repeatedly ruled WTO-incompatible” and notes that the EU will continue to “raise compliance concerns with the U.S. authorities.” The report also states that “unfair anti-dumping measures taken by the United States against the EU continue to be a major trade irritant” and that “U.S. duties have been inflated using the zeroing methodology which has already been found WTO-incompatible and is currently subject to further litigation” in over 50 anti-dumping cases and reviews since 1995.

UAE Ports Company To Undergo Additional 45-Day Review of Transaction

Dubai Ports World (DP World), a UAE-owned port operating company, offered to delay its purchase of British-based Peninsular and Oriental Steam Navigation (P&O) in an effort to assuage members of Congress concerned with the deal. The company agreed on February 26, 2006 to undergo an additional 45-day review of its transaction by the Committee on Foreign Investment in the United States (CFIUS), an interagency group that reviews foreign purchases of U.S. firms for their national security implications.

On February 13, DP World purchased British-based P&O. P&O North America manages commercial operations at the ports of New York, New Jersey, Baltimore, New Orleans, Miami and Philadelphia, as well as several other, smaller U.S. ports. DP World’s purchase of P&O would transfer control of commercial operations in these ports to the UAE-owned firm. In its February 26 statement, the company offered to delay taking control of U.S. port terminals to allow the U.S. government more time to investigate the transaction. The company will assume legal ownership of the U.S. ports on March 2, but it “will not exercise control over, or otherwise influence the management of, P&O’s U.S. operations” until CFIUS completes its 45-day review. DP World also noted that it will “guarantee the independence of all terminal operations managed by P&O North America by establishing operations as a completely separate business unit.” CFIUS will initiate the investigation when it receives the official request from DP World.

Several members of Congress, however, found the company’s offer insufficient. Senator Robert J. Menendez (D-NJ) stated that DP World’s “promise isn’t worth the paper on which it is written,” and that he would continue with “emergency legislation” meant to delay the takeover of U.S. ports and allow for more investigations into the transaction. Sens. Hillary Clinton (D-NY), Norm Coleman (R-MN), Charles Schumer (D-NY), Olympia Snowe (R-ME), Susan Collins (R-ME), Tom Coburn (R-OK), and Jack Reed (D-RI) joined Menendez in introducing legislation on February 27, 2006 that would prohibit companies owned or controlled by foreign governments from acquiring port operations in the United States. The Foreign Investment Security Improvement Act of 2006 (S. 2333) requires CFIUS to investigate further the DP World purchase and to update Congress regularly on the investigation’s results. Sens. Schumer, Coburn, Frank Lautenberg (D-NJ), and Christopher Dodd (D-CT) have also circulated a letter to the Department of Treasury and Congress urging Treasury Secretary John Snow to reopen an investigation of the transaction. Treasury serves as the chair of CFIUS. Schumer, Clinton and Sen. Carl Levin (D-MI) have charged that the Bush administration wrongly ignored a legal provision that requires a 45-day investigation when a foreign company purchasing a U.S. entity

is government-owned. Administration officials counter that the 45-day investigation is discretionary and required only if CFIUS identifies a national security concern; the same officials stated that all previous administrations have interpreted the investigation as discretionary since Congress passed the amendment in 1992.

The Bush Administration believes it has done everything possible to ease Congressional concerns that the deal would have dire national security implications. Although DP World's voluntary request for an additional investigation might appease some in Congress, many still see the transaction as a security concern. However, political insiders speculate that many members' objections have less to do with national security and more to do with publicity on an issue that could garner them additional votes during the 2006 mid-term elections. That the U.S. Coast Guard stated that "there are many intelligence gaps, concerning the potential for [DP World] or P&O assets to support terrorist operations" does not bode well for the transaction or for calming Congressional fervor on the matter.

USTR Visits China on IPR, Plans Trip to Saudi Arabia To Discuss Arab League Boycott

Officials from the Office of the United States Trade Representative (USTR) will make separate trips to China and Saudi Arabia to discuss bilateral trade relations. USTR officials will travel to China during the week of February 27 where USTR general counsel Jim Mendenhall, Assistant USTR for China Timothy Stratford and Acting Assistant USTR for Intellectual Property Victoria Espinel will meet with Chinese officials to discuss China's intellectual property rights (IPR) enforcement and the dispute between China and the United States on auto parts tariffs. On IPR, USTR will seek more information on China's monitoring and enforcement efforts. The United States first sought such information from China on October 26, 2005, when it filed a request under Article 63.3 of the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) to determine if China is complying with its TRIPS obligations. Article 63.3 allows WTO Member states to request information on TRIPS implementation in other countries. In December 2005, China denied the U.S. request, arguing that the TRIPS agreement did not require China to provide such information. Mendenhall responded that "if China is not forthcoming at the March 1 meeting, the next step would be to address the issue at the upcoming Joint Commission on Commerce and Trade meeting to be held in Washington April 11." The JCCT consists of high-level dialogues between U.S. and Chinese trade and economic officials. Mendenhall also noted that USTR is "running out of options, other than a WTO dispute settlement case" on China's "rampant IPR piracy."

Mendenhall will also discuss China's auto parts tariffs during the trip, stating that the United States is "very seriously" considering filing a WTO dispute settlement case against China over the tariffs that USTR contends "amount to domestic content requirements for autos built in China, which violates WTO rules." According to a 2005 USTR report on China's WTO compliance, China assesses a higher tariff on auto parts imports if its Customs service

determines that the parts could be used to assemble an entire car. According to the report, China also requires that certain key auto parts must be made in China or face the higher tariff.

After the USTR delegation's trip to China, Assistant USTR for Europe and the Middle East Shaun Donnelly and officials from the U.S. Departments of State and Commerce will travel to Saudi Arabia to discuss U.S.-Saudi trade relations, Saudi Arabia's accession to the World Trade Organization (WTO) and Saudi Arabia's alleged support of the Arab League boycott of Israel. Donnelly stated that USTR is "seeking to clarify with Saudi Arabia exactly what has been said [by Saudi officials] and what hasn't" on the Arab boycott. According to USTR, the Arab League's boycott of Israeli goods requires member countries to "prohibit dealings with blacklisted companies determined to be making a significant contribution to the economic development or military capability of Israel." USTR Portman has stated that Saudi Arabia's application of the boycott is a "big concern of the United States" and noted that Saudi officials have assured him that Saudi Arabia will abide by its WTO commitment to provide nondiscriminatory treatment to all other WTO Members, including Israel.

Free Trade Agreements

U.S. Trade Policy Staff Committee Holds Public Hearing on U.S.-South Korea FTA

SUMMARY

On March 14, 2006, the United States Trade Representative's (USTR) Trade Policy Staff Committee (TPSC) held a public hearing on the United States-South Korea Free Trade Agreement (FTA). Government representatives from USTR, the United States International Trade Commission (USITC) and the Departments of Agriculture, Commerce, Labor, State, and Treasury were present to hear the **on-the-record** testimony from U.S. and Korean government officials and U.S. businesses on the FTA and its implications.

ANALYSIS

On March 14, 2006, USTR's TPSC held a public hearing on the United States-South Korea FTA. Government representatives from the Office of the USTR, the USITC and the Departments of Agriculture, Commerce, Labor, State, and Treasury were present to hear the **on-the-record** testimonies provided by government officials and businesses on the FTA and its implications. Under the Trade Act of 1974, the President is required to give any interested persons or entities an opportunity to express their views on the proposed agreement to help the Administration develop its negotiating objectives. TPSC co-chairs invited experts from the public and private sectors to share their views on the economic impact of the FTA. The co-chairs also noted that March 24, 2006 is the deadline for the public at large to submit written comments.

- **Seok-young Choi, Minister of Economic Affairs from the Korean Embassy** presented testimony on the Korean perspective of the pending FTA. In addition to highlighting the long-term economic benefits for both nations through trade expansion, Choi emphasized that the agreement would strengthen the existing U.S.-Korean political alliance and noted that the FTA would give the United States a "geopolitical advantage in Northeast Asia." He indicated that President Roh Moo-hyun places the "FTA as one of the highest policy priorities for the Korean Government." Choi warned that the nations must reach an equitable, balanced package but expressed optimism that the FTA will be successful as long as both nations follow "the principles of hard work, flexibility, and mutual respect."
- **Ambassador Richard Holwill, representing the U.S.-Korea Business Council and the American Chamber of Commerce in Korea**, endorsed the FTA and stated that the agreement "can be comprehensive and lead to greater market access for U.S. companies." In the services sector, Holwill stressed the elimination of market access restrictions through their encapsulation on a "negative list" basis. Holwill stated that the FTA should

create a more “science-based, transparent mechanism of decision making for the pharmaceutical industry,” and that Korea should reform its “cascading tariff and tax structure for motor vehicles.” In customs cooperation, Holwill pushed for “an FTA that would increase de minimus level from US \$100 to US \$200, while creating customs procedure that provide for 24 hours per day service year round with pre-clearance capabilities at Korean airports.” Overall, he suggested that the FTA should have general commitments to greater regulatory predictability and transparency for U.S. business interests in Korea.

- **Thea M. Lee, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)**, stated that she is skeptical that a U.S.-Korea agreement modeled after past FTAs will adequately address Korean labor laws’ current problems. According to Lee, these problems include: limitation on strike activities; governmental interference in labor union affairs; and a lack of trade union rights for public servants, as embodied in recent legislation. Lee warned that should a U.S.-Korea FTA “fail to be vigilant in addressing these worker rights’ violations,” then the FTA would have detrimental effects on both Korean and U.S. working families.
- **Jay Truitt, Vice President of Government Affairs for the National Cattlemen’s Beef Association (NCBA)**, expressed enthusiastic support for a U.S.-Korea agreement because “it will provide the largest growth opportunity for U.S. cattle producers since 1988.” According to Truitt, Korea is the third largest market for U.S. beef products, and he proposed three areas that should be included in the U.S.-Korea FTA. First, the U.S. cattle industry wants a reduction in Korea’s beef tariffs currently bound at 40 percent. Second, Korea should completely lift a December 2003 ban on some U.S. beef products by the time Congress considers a final FTA. Third, the bilateral agreement should eliminate sanitary and phytosanitary (SPS) barriers for U.S. beef products by following the precedents of recent U.S. FTAs.
- **Robert Cummings, USA Rice Federation**, recommended that the U.S.-Korea FTA “significantly reduce” all current barriers to trade in rice, “culminating in unfettered free trade in less than 10 years.” Hesitant that the U.S.-Korea FTA might produce worse terms for U.S. rice producers than those of other bilateral agreements such as the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA), Peru FTA, and Colombia FTAs, Cummings said U.S. negotiators should “treat Korea differently since it is a developed nation.” He also warned that U.S. negotiators should resist any pressure to exempt free rice trade through the unlimited use of import safeguard protections.

- **Bob Stallman, President of the American Farm Bureau Federation (AFBF)** stated that the AFBF was “pleased with the announcement of the FTA,” but that his organization remained concerned with South Korea’s “high tariff rates” and “the country’s strong tendencies toward protectionism.” Stallman argued that the FTA should attempt to “eliminate or significantly reduce these tariffs,” and that USTR must also focus its attention on elimination “South Korea’s non-tariff barriers” including their tariff rate quota administration and “arbitrary sanitary and phytosanitary standards.” He also stated that the FTA’ negotiation must provide real market access, eliminate non-trade barriers and must be comprehensive in scope.”

OUTLOOK

USTR Rob Portman stated February 2nd that the U.S.-Korea FTA “is the most commercially significant free trade negotiation [the United States has] embarked on in 15 years” and that “removing trade and investment barriers between [the] two nations through an FTA will increase market access for our farmers, ranchers, workers and businesses to the dynamic and growing Korean economy, boosting trade in goods and services.” Portman also stated that “few countries better represent the promise of open markets, democracy and economic reform than Korea.” Although both countries and most of their domestic industries are enthusiastic about the FTA, negotiations will be “drawn out” and difficult, as they will involve “non-traditional issues” (*i.e.*, issues other than tariff/quota elimination) like non-tariff barriers (NTBs) and subsidies and very sensitive agricultural sectors like rice and beef. For example, the U.S. auto industry alleges that Korean environmental regulations prevent U.S., European and Japanese automakers from selling their automobiles to the Korean market. Also, the Korean government’s designation of agricultural products (particularly rice), electronics, and chemicals as “sensitive products,” will be a likely point of contention.

Sources further indicate that Korean negotiators will likely push for a bilateral dispute settlement mechanism to avoid subjecting Korean imports to U.S. trade remedies laws. U.S. trade remedy laws have never been considered in a U.S. bilateral trade agreement and are quite sacred among most in the U.S. Congress. The issues brought up at the TPSC hearing reinforce the idea that negotiations with Korea may be the most complex since those for the North American Free Trade Agreement (NAFTA) and will thus require skillful negotiations to ensure that the agreement will not only be timely, but also be one that the U.S. Congress will accept. However, with the recent delays in U.S. FTA negotiations with both Thailand and the United Arab Emirates (UAE), USTR now may have the resources necessary to accomplish much of the “heavy lifting” in the agreement’s early stages, before the other negotiations resume.

Update on U.S.-Latin American Free Trade Agreements (FTAs)

SUMMARY

We provide below a brief update on the status of Free Trade Agreement (FTA) negotiations between the United States and several Latin American countries. Recent trade developments include progress in the ongoing round of FTA negotiations between the United States and Ecuador, possible Dominican Republic- Central American Free Trade Agreement (DR-CAFTA) implementation by Honduras and Nicaragua, and lack of progress in U.S.-Panama FTA talks.

ANALYSIS

U.S.-DR-CAFTA. The DR-CAFTA agreement continues to face implementation problems. El Salvador is the first and only country that fully implemented the FTA on March 1, 2006. The United States Trade Representative (USTR) will likely find that Honduras and Nicaragua have implemented the agreement by April 1 and DR-CAFTA will have thus entered into force with respect to those countries on that date. According to recent statements from Honduran and Nicaraguan trade officials, both countries have fulfilled all the obligations set forth in DR-CAFTA and are ready to “receive USTR’s blessing this week.” Last week, the Honduran and Nicaraguan Congresses made substantial modifications to their domestic laws to reflect the obligations established under DR-CAFTA.

Guatemala is close to meeting U.S. implementation demands and has just completed discussions with the United States regarding implementation issues. Guatemala’s Congress still needs to vote on numerous amendments to existing laws to bring them into line with the agreement thus potentially further delaying the agreement’s entry into force. Guatemalan officials are aiming for a May deadline for complying with U.S. demands.

Costa Rica is the only country that has not ratified the agreement. The Foreign Affairs Commission of the Costa Rican Congress is holding hearings with more than 30 organizations and trade unions that oppose the FTA. Government sources have pointed out that the Costa Rican Congress may not have enough time to conclude the hearings and approve the agreement by the May 1 inauguration of president-elect Oscar Arias.

The Dominican Republic is expected to implement the agreement on July 1, 2006.

U.S.-Colombia FTA. After successfully concluding their FTA negotiations on February 27, the United States and Colombia are rallying support for the agreement in order to ensure approval in their respective Congresses. The agreement will next move to the U.S. Congress for consideration. The Colombian agreement was part of the U.S.-Andean FTA, which included Peru and Ecuador as well. Given that 2006 is an election year, Congress will likely consider any completed trade agreements before mid-summer when the election season begins. With Colombia’s FTA negotiations complete, USTR has afforded Congress with time to consider the Colombian agreement together with the Peru FTA.

U.S.-Peru FTA. On January 6, 2006, President Bush notified Congress of the United States' intention to enter into an FTA with Peru. The timetable for Congressional consideration of the Peruvian FTA is still uncertain but it is likely to happen before the August recess. A recent U.S. State Department report analyzing labor rights problems in Peru has generated concerns in Congress and could provide some members of Congress with more "reasons" to withhold their support for the Peruvian FTA.

U.S.-Ecuador FTA. Ecuador and the United States made progress at the latest round of their FTA negotiations held on March 26. The parties closed several negotiating tables, including rules of origin, government procurement, market access for textile goods, and the chapters on investment and telecommunications. Both sides were close to completing the dispute settlement chapter and continued discussions on market access for 600 tariff headings of agricultural goods (including duty-free treatment for canned tuna) and intellectual property rights (IPR). U.S. and Ecuadorian negotiators will continue to hold talks throughout this week. According to an official source at the U.S. Department of Commerce (DOC), both sides could conclude the agreement in the current round if they narrow their differences on IPR and agriculture.

U.S.-Panama FTA. The last FTA round between the United States and Panama occurred on January 10. At this meeting, both delegations made progress on government procurement issues related to the Panama Canal and several agriculture issues, including treatment of "sensitive products." However, substantial work remains in the areas of sanitary and phytosanitary (SPS) measures and agriculture. According to an official source at the U.S. DOC, the parties are getting ready to schedule a new round of talks for late April or early May. It is unclear, however, whether the parties will be able to finish the negotiations at this round.

OUTLOOK

Nicaragua and Honduras are likely to be next to implement DR-CAFTA. Both countries are aiming for May 1, although USTR has remained silent on whether DR-CAFTA will enter into force for these countries by that deadline.

The Bush Administration is evaluating its strategy as to how it will consider the FTAs with Peru and Colombia, and possibly Ecuador if talks are concluded soon. USTR is still debating whether it will combine the Peruvian and Colombian FTAs or if it will submit them separately to Congress. Both agreements have better chances to be approved if submitted jointly given that 2006 is an electoral year and recent criticism on their weak labor standards. If the FTAs were to be submitted separately, the Administration would have to rally support for two separate agreements. In contrast, if the two FTAs are packaged together, then the Administration can focus on one battle.

The U.S.-Ecuador FTA has good prospects for conclusion in the next few weeks. The agreement, however, is likely to face strong opposition in Congress. The timeframe for concluding the FTA negotiations with Panama is less clear. The parties seem committed to concluding the negotiations but they have dragged on for almost two years. It will require

willingness from both sides to make concessions at the next negotiating round to reach an agreement. Consideration of both the Ecuador and Panama FTA is likely to take place in the fall after the August recess.

Free Trade Agreements Highlights

U.S.-SACU Talks to Continue in April

The United States and the Southern African Customs Union (SACU) – Botswana, Lesotho, Namibia, Swaziland, and South Africa – have scheduled continued talks for mid-April in South Africa to assess stalled bilateral Free Trade Agreement (FTA) negotiations. Deputy United States Trade Representative (USTR) Karan K. Bhatia will lead the U.S. delegation. The discussions, however, will not likely address substantive FTA provisions, as USTR officials stated that “the meeting will provide an opportunity for the two sides to take stock of the FTA negotiations and to determine the next steps in advancing the U.S.-SACU trade relationship.” Sources indicate that the SACU countries want the United States to consider exploring the FTA’s easier aspects first – including improved market access in agriculture and non-agriculture goods – before tackling more difficult issues such as intellectual property rights (IPR) protection. USTR Rob Portman has stated that the United States remains committed to the U.S.-SACU FTA but noted that the United States “will only accept a comprehensive agreement.” He added that the two sides “continue to have productive discussions.”

U.S.-SACU FTA talks stalled between June 2004 and July 2005 but resumed briefly following USTR officials’ summer 2005 visit to the region, during which the parties created a work plan “for pursuing talks that involved, among other things, meeting every six to eight weeks to address specific issues ranging from agriculture to services to intellectual property protection.” However, the nations met only once thereafter - a September 2005 meeting in Botswana that achieved little. SACU negotiators are concerned that their countries’ service sectors will be unable to compete in an open market and fear the prospect of expropriation in the case of noncompliance with an investment agreement. Agricultural market access and pharmaceutical IPR also remain contentious issues. USTR insists that December 2006 is the deadline for concluding FTA negotiations, due to the mid-2007 expiration of Presidential Trade Promotion Authority (TPA). Should the parties make little progress at the April meetings and be unable to determine a plan for the agreement’s expeditious completion, both sides will have assess whether they can realistically reach an agreement before the end of the year.

U.S.-Egypt Hold “Low-Key” Talks on Potentially Re-launching FTA

On March 27-30, 2006, the United States and Egypt held “low-key” discussions in Cairo on re-launching stalled talks on whether the nations will begin formal Free Trade Agreement (FTA) negotiations. The senior-level discussions also included trade-related issues such as the World Trade Organization (WTO) Doha Round negotiations and intellectual property rights (IPR) enforcement. Director for Middle East Affairs at the Office of the United States Trade Representative (USTR) Edmund Saums III led the U.S. delegation. On the discussions, USTR Rob Portman stated that USTR “wants to be sure that [Egypt] understands that [the United States is] still interested over time in trying to work out” an agreement.

Egyptian officials have criticized the United States for “mixing politics with trade” and delaying the start of FTA negotiations talks for political reasons. Trade Minister Rashid Mohamed Rashid stated that “mixing business with politics was not the right way to proceed.” The United States countered that FTA delays are not associated with Egypt’s politics, but that “political circumstances” in Egypt have tarnished Egypt’s image in Congress, which would ultimately approve a final bilateral trade agreement.

On January 17, 2006, the United States ceased bilateral negotiations with Egypt over a potential FTA to protest the Egyptian government’s imprisonment of leading Egyptian political dissident Ayman Nour. In late December 2005, an Egyptian court sentenced Nour to five years of forced labor for alleged election law violations. American officials believe these are false charges. The United States also found Egypt’s September 2005 elections to be “highly flawed” and condemned Egyptian security forces firing upon protesters during the country’s November-December parliamentary elections. The low-key dialogue between the two countries is an indication that, despite Congressional concerns over Egypt’s human rights record, the United States still wishes to pursue an agreement. U.S. unwillingness to abandon the FTA is likely due to its geopolitical ramifications: Egypt would represent one more step toward the Bush Administration’s goal of creating a United States Middle Eastern Free Trade Area (USMEFTA) by 2013. In contrast, the United States quickly jettisoned a potential FTA with Switzerland based on the two sides’ inability to resolve differences regarding agricultural market access. However, the mid-2007 expiry of Presidential Trade Promotion Authority (TPA) dictates that all U.S. bilateral FTAs must be completed by early 2007. Unless Egypt and the United States can resolve Congress’ human rights concerns, the U.S. will have no choice but to abandon FTA negotiations, regardless of the potential geopolitical benefits the agreement would provide the United States and its allies.

House Ways and Means to Hold U.S.-Oman FTA Hearing

On March 29, 2006, Chairman of the House Ways and Means Committee Rep. Bill Thomas (R-CA) announced that the Committee will hold a hearing on the implementation of the U.S.-Oman Free Trade Agreement (FTA) on April 5, 2006. The hearing will focus on the agreement’s provisions and its implementation. Scheduled witnesses include Ambassador Susan Schwab, Deputy United States Trade Representative (USTR).

On January 19, 2006, USTR Rob Portman and Oman’s Minister of Commerce and Industry Maqbool bin Ali Sultan signed the U.S.-Oman FTA. Upon the agreement’s entry into force, 100 percent of consumer and industrial products and 87 percent of agricultural goods will be duty-free. Oman will also provide: (i) substantial market access across all services sectors; (ii) a secure, predictable legal framework for U.S. investors operating in Oman; (iii) effective enforcement of labor and environmental laws; and (iv) intellectual property rights (IPR) protections. The FTA must now proceed through the U.S. Congress where both Houses will consider the formal implementing legislation before casting a vote. Congress may have delayed consideration of the agreement due to concerns over Oman’s labor laws, but Maqbool bin Ali Sultan sent a letter on March 27 to the U.S. government outlining Oman’s efforts to conform its

labor laws to International Labor Organization (ILO) standards. Although no timetable has been set as to when Congress will vote on the FTA, the scheduling of the House Ways and Means hearing – especially so soon following the Omani letter on labor reforms – is a strong indication that Congress is now ready to consider and vote on the agreement.

Passage of the FTA would represent another step toward the President's goal of completing a U.S.- Middle East Free Trade Area (USMEFTA) by 2013. Through USMEFTA, “the United States seeks to expand trade with and investment in Middle East countries to further their domestic reforms and the rule of law, protect intellectual property, and create a foundation for economic growth and prosperity.” Since President Bush announced the USMEFTA Initiative in May 2003 the United States has signed FTAs with Israel, Jordan, Bahrain and Morocco, and is in formal FTA negotiations with the United Arab Emirates (UAE).

U.S. and UAE Schedule Trade Talks for Week of March 20; FTA Negotiations to Resume in Late April

United States Trade Representative (USTR) Rob Portman will meet during the week of March 20 with United Arab Emirates’ (UAE) Minister of Economy Sheikha Lubna al-Qassimi in Washington, D.C. to discuss trade matters. The two sides have also tentatively rescheduled the next round of formal free trade agreement (FTA) negotiations for late April; negotiations were originally set for the week of March 13 in Washington. Portman indicated that market access and intellectual property (IP) protection are among the issues that the parties still must resolve.

The UAE has recently attracted attention because of the controversial sale of several U.S. ports’ operation rights to UAE-owned Dubai Ports World (DP World). DP World’s purchase of British-based Peninsular and Oriental Steam Navigation (P&O) would have transferred control of commercial operations at the ports of New York, New Jersey, Baltimore, New Orleans, Miami, Philadelphia to the UAE-based firm. Due to Congressional backlash regarding the sale, DP World announced that it would sell its U.S. operations within four to six months. In a telephone conversation with UAE Foreign Minister Sheikh Abdullah bin Zayed al-Nahayan, Portman assured the Minister that the ports deal is “strictly” a security matter and did not involve trade issues. He noted that the controversy “is not about trade.... The United States welcomes investment [and is] open to investment.”

The United States and the UAE have tentatively set a date for the formal resumption of FTA talks and USTR officials remain optimistic that the parties will achieve an agreement by the end of 2006. DP World’s recent decision to sell U.S. port operations may have tempered Congressional security concerns, but those concerns might have soured UAE officials to the thought of completing a comprehensive bilateral agreement by USTR’s unofficial deadline. Along similar lines, Congressional uproar over the DP World ports transaction might adversely affect future trade negotiations between the United States and other Middle Eastern countries. The U.S. ports’ operating rights had been foreign-owned (by British-based P&O) since 1987, but it was only when a Middle Eastern firm attempted to purchase these rights that Congress produced formal and widespread opposition. Congress’ actions might dissuade Middle Eastern

officials from entering into bilateral FTAs with the United States, because the DP World protests appear to contradict the Bush Administration's goals for the U.S.-Middle Eastern Free Trade Area (USMEFTA) to increase economic ties and produce a more amicable political relationship between the United States and Middle Eastern nations.

U.S.-South Korea FTA Talks Moving Quickly

The United States and South Korea will exchange initial negotiating texts for a bilateral free trade agreement (FTA) in early May, shortly after the 90-day consultation period required by Presidential Trade Promotion Authority (TPA). According to Assistant United States Trade Representative for Japan, Korea, and APEC Affairs Wendy Cutler, the first round of negotiations will begin in Washington, DC on June 5, with a second round to follow in Seoul on July 10. The two countries aim to complete FTA talks by the end of 2006 to provide sufficient time for Congressional consideration of the FTA's formal implementing legislation before TPA expires in mid-2007.

Sources predict that agriculture, pharmaceuticals, and non-tariff barriers (NTBs) will be focal points of the FTA negotiations. Korean and U.S. industry groups have indicated potential problems in each of these sectors. The United States and South Korea, however, appear determined to complete the FTA as quickly as possible, despite these potential hurdles. The mid-2007 expiry of TPA will likely continue to influence the speed of the negotiations, as the United States has maintained the ability of parties to meet this deadline will determine the outcome of any ongoing FTA negotiations.

United States and United Arab Emirates (UAE) Postpone FTA Talks

The United States and the United Arab Emirates (UAE) postponed until further notice the March 13 round of trade talks. A spokeswoman for the Office of the United States Trade Representative (USTR) stated that such a delay is common practice, as both sides need more time to prepare for the negotiations. Some experts, however, suspect that the delay is related to the rift between U.S. Congress and the Bush Administration regarding the sale of U.S. ports' operation rights to Dubai Ports World (DP World) – a UAE-owned port management company. Others suggest that the postponed Free Trade Agreement (FTA) negotiations could influence how the countries' trade negotiators approach the trade agreement's services and investment chapters.

Formal bilateral FTA negotiations between the United States and the UAE began in March 2005 and are expected to be completed by the end of 2006. The UAE FTA is part of the Administration's broader goal to establish the Middle Eastern Free Trade Area (MEFTA) by 2013. With trade between the two nations totaling \$9.95 billion in 2005, the UAE is the United States' third largest trading partner in the Middle East. Under the USMEFTA, the United States has completed bilateral FTAs with Bahrain and Oman.

Although the UAE FTA negotiations have encountered small delays, they have been proceeding relatively smoothly until several Congressional Democrats and Republicans protested

the DP World transaction. Many experts predicted that Congressional uproar over the ports sale would negatively impact the FTA negotiations, and delay of the March 13th negotiations' may be the first indication, despite USTR's assurances otherwise. Whether the FTA can overcome these problems is unclear, but the USMEFTA's geopolitical concerns may help the trade agreement overcome the DP World setback.

Bush Administration: Congressional Concerns Delay Initiation of US-Egypt FTA Talks

Officials in the Bush administration have indicated that fear of Congressional disapproval has delayed the initiation of formal bilateral free trade agreement (FTA) negotiations between the United States and Egypt. Congressional members in both the Democratic and Republican parties oppose U.S. engagement with Egypt because of the Egyptian government's allegedly undemocratic posture and its questionable record on human rights. Secretary of State Condoleezza Rice indicated that the "right atmosphere" is required before formal FTA talks can start, stating that Egypt must "stay on a democratic course" in the meantime. The Bush Administration will delay FTA talks until it is confident that Congress would approve of a final agreement – a task that will require overcoming "strong [Congressional] opposition," according to U.S. ambassador Francis J. Ricciardone. Ricciardone also speculated that the FTAs progress will depend on the "right circumstances" in the US-Egyptian relationship, as well as internal politics between the Administration and Congress.

On January 17, 2006, the United States ceased bilateral discussions with Egypt on a possible FTA to protest the Egyptian government's imprisonment of leading Egyptian political dissident Ayman Nour. In late December 2005, an Egyptian court sentenced Nour to five years of forced labor for alleged election law violations. Many American officials in Congress and the State Department believe these charges are false. Nour won seven percent of the vote in the September 2005 multiparty elections, placing second to current President Hosni Mubarak. The United States also found Egypt's September 2005 elections to be "highly flawed" and condemned Egyptian security forces firing upon protesters during the country's November-December parliamentary elections. Secretary Rice also noted that Egypt postponed municipal elections that were to be held in April.

Because Egypt's recent political actions – and the U.S. Congress' disapproval of them – have delayed formal trade talks, it is unclear whether the nations will have sufficient time to complete an agreement even if they eventually resolve their differences on human rights. USTR has maintained that it will not enter into bilateral FTA negotiations unless it reasonably believes that the FTA can be completed before the President's Trade Promotion Authority (TPA) is set to expire in mid-2007. Thus, time is running out for the initiation of FTA negotiations with any new countries, including Egypt. Egypt remains cautiously optimistic that it can work out an FTA, and the United States has not officially cancelled potential FTA negotiations. However, until the Administration can convince most members of Congress that an FTA is in the best interests of both nations and would not undermine the United States' stance on human rights, the chances that the two nations will begin FTA talks grows increasingly unlikely.

State Department Report Warns on Labor Rights Problems in Peru

A recent report by the State Department on Peruvian labor rights found a number of problems in the country, including failure to bar employer interference in union organization, insufficient protections against anti-union discrimination, onerous strike requirements and inadequate child labor protections. The report has aroused concerns in Congress, which is expected to vote on the U.S.-Peru Free Trade Agreement (FTA) in April. House Ways and Means Ranking Democrat Charles Rangel (D-NY) said that he “cannot believe our government would move forward with an FTA that ignores these problems so clearly outlined by our very own State Department.”

The Peruvian FTA’s labor provisions are modeled after those of the U.S.-Dominican Republic-Central America FTA (DR-CAFTA), which allows each country to enforce its own labor standards. Most House Democrats publicly linked their DR-CAFTA opposition to the agreement’s labor provisions, and their resistance echoes that of U.S. organized labor. On March 7, in a letter to United States Trade Representative (USTR) Rob Portman, James Hoffa, Teamster’s president, called for a renegotiation of the U.S.-Peru FTA. Hoffa criticized the agreement as duplicate DR-CAFTA, which he believes does not provide adequate labor standards. Hoffa stated that the Teamsters Union stands ready to actively and strongly oppose both the Peruvian and Colombian agreements.

Although most Democrats blamed their opposition to DR-CAFTA on the agreement’s “inadequate” labor provisions, most insiders agree that their stance was based more on partisanship than actual concerns over the countries’ labor standards. Framing opposition to FTAs in this manner, however, allows Democrats to placate a traditional voting base – organized labor – that opposes FTAs, as Hoffa’s statements make clear. Republicans, on the other hand, resisted DR-CAFTA because of the increased foreign competition it might bring to domestic constituents, most notably the sugar and textiles industry. The State Department’s report, therefore, will not likely change many minds in Congress, but it will provide Democrats with more “reasons” to withhold their support for the Peruvian FTA. In reality, however, most Democratic resistance will stem from the party’s desire to harm President Bush’s agenda.

U.S. Announces Initiation of Formal FTA Talks with Malaysia

On March 8, 2006, United States Trade Representative (USTR) Rob Portman announced that the United States’ will pursue a Free Trade Agreement (FTA) with Malaysia. Malaysia’s Minister of Trade Rafidah Aziz and a bipartisan group of U.S. Congressional leaders joined Portman who noted that the negotiations will begin after the expiration of a 90-day consultation period with the U.S. Congress, as mandated by Presidential Trade Promotion Authority (TPA). Portman stated that “Malaysia has been at the forefront of the economic dynamism transforming Asia in recent years” and noted that “Malaysia’s rapidly growing economy will help generate meaningful export opportunities for [U.S.] workers, service providers, and farmers.” Portman also stated that “bipartisanship is paramount in international trade,” and that he was “pleased to see leaders in Congress who are both Republicans and Democrats supporting [the FTA’s]

launch.” Portman added that the United States has achieved moderate success in securing larger market access in Malaysia but will have to work closely with Malaysian officials on certain issues, including agriculture. Portman lauded Malaysia for expressing “not just a willingness to engage with [the United States], but a willingness to take on some tough issues.” USTR officials had met with their Malaysian counterparts in a January meeting that Assistant USTR for Japan, Korea, and APEC Affairs Wendy Cutler described as “very positive.”

In recent days, Malaysia has taken steps that have encouraged United States to initiate formal FTA negotiations. On March 7, 2006, Malaysia reopened its market to U.S. boneless beef and beef products. The initial agreement will allow U.S. plants currently approved by Malaysia to resume exports of boneless beef from cattle less than 30 months of age once the United States and Malaysia finalize the import documentation statements and other details. Malaysia began prohibiting imports of U.S. beef and beef products in December 2003, following the detection of Bovine Spongiform Encephalopathy (BSE or “mad cow disease”) in the United States. USTR Portman welcomed Malaysia’s decision, stating that “this is a good first step toward resuming normal U.S. beef trade with Malaysia [and] also underscores the ability of our governments to work together to resolve important issues.”

The United States is Malaysia’s largest trading partner and the largest foreign investor. In 2005, U.S. exports to Malaysia totaled \$10.5 billion. According to USTR, Malaysia is an important player, “particularly with respect to strengthening the protection of intellectual property rights, in the Asia Pacific Economic Cooperation (APEC) forum.” The FTA has already garnered Congressional support. On January 30, 2006, Representatives Pete Sessions (R-TX) and Gregory Meeks (D-NY) – members of the Malaysia Trade, Security, and Economic Cooperation Caucus – circulated to other members of Congress a letter supporting the initiation of formal FTA negotiations with Malaysia. In the letter, Reps. Sessions and Meeks highlighted the active role of large U.S. companies in Malaysia’s information technology (IT) sector and opined that the FTA “would create new opportunities in a cross section of American economic sectors from agriculture, financial services, and automobiles.” They added that the FTA “is supported by major American business associations” including the U.S. Chamber of Commerce and the National Association of Manufacturers (NAM). The letter also outlined geopolitical reasons for a U.S.-Malaysia FTA, stating that initiating FTA negotiations with Malaysia would “increase ties to a strategically important geographic region.” The letter added that the FTA would solidify relations with a majority Muslim Democratic nation, which in turn could strengthen Malaysia’s role as a critical U.S. counter-terrorism partner and a leading defense cooperation partner for the U.S. military.

USTR's believes that the United States can extract valuable concessions from FTA candidates before actual negotiations begin. Malaysia’s willingness to make concessions on U.S. beef imports to convince the United States to begin formal FTA negotiations provides further proof that the U.S. strategy of “competitive liberalization” is working, as nations competing for a spot at the United States' "FTA negotiating table" make such pre-negotiation concessions.

U.S. and Australia Meet for Annual FTA Review

During the first annual review of the U.S.-Australia FTA, United States Trade Representative (USTR) Rob Portman met with Australian Deputy Prime Minister and Minister for Trade Mark Vaile on March 7, 2006 and stated that the United States has been “pleased with the success of the FTA so far” and that “after only one year, the U.S.-Australia FTA has expanded trade in goods and services, benefiting the citizens of both countries.” According to USTR, exports of U.S. goods to Australia increased 10.9 percent in 2005 and totaled close to \$16 billion dollars. Both countries signed the bilateral agreement in 2004 and the FTA took effect on January 1, 2005. The FTA mandates the two countries to meet once a year and review the agreement.

Sugar and pharmaceuticals were the annual review’s primary topics. Vaile discussed the need for greater access to the U.S. sugar market for Australian farmers, as sugar was excluded from the FTA. Portman stated, however, that “this is not the time to reopen the FTA” and noted that Australia has increased sugar exports to the United States due to U.S. sugar shortages resulting from 2005 natural disasters. Portman raised U.S. concerns with the “anti-ever greening” amendment – signed into law during the Australian Parliament’s consideration of the FTA - which blocks generic medicines through the Australian courts. Sources indicate that the two ministers discussed the issue but noted there was little movement on the matter.

Upon the conclusion of the dialogue between Portman and Vaile, the FTA’s working groups will continue their work. On **telecommunications**, both sides have committed to a regular discussion of issues of interest in trade in telecommunications and information technology. The first such discussion was held by video conference the week of February 27 and covered: (i) recent regulatory developments in Australia including the privatization of Telstra (Australia’s largest telecom company); (ii) recent regulatory developments in the United States; (iii) spectrum policy; and (iv) progress with telecommunications in other FTA negotiations. Australian sources indicate that the U.S. side (comprised of officials from USTR, Department of Commerce, and the Federal Communications Commission) sought reassurances that the Australian Competition and Consumer Policy Commission (ACCC) would take an independent stance on Telstra’s privatization. In **financial services**, the Australian securities sector has expressed disappointment with the lack of progress to date, but U.S. negotiators suggest that a softer approach from Australia could deliver regulatory harmonization. The Working Group on **professional services** will focus on a review of the existing models of cooperation and consultation in the professional services arena.

Senate Finance Subcommittee Holds Hearing on U.S.-Oman FTA

On March 6, 2006, the Senate Finance Subcommittee on International Trade held a hearing on the U.S.-Oman Free Trade Agreement (FTA), at which Deputy United States Trade Representative (USTR) Susan Schwab testified that Oman has assured the United States that it does not apply the Arab League Boycott of Israel. According to Schwab, Oman’s Minister of Commerce Maqbool bin Ali bin Sultan sent a letter to USTR stating that Oman does not apply

the boycott's primary, secondary, or tertiary aspects nor does it have any laws related to the boycott. The primary aspect of the Arab League boycott prohibits Arab countries or companies from maintaining commercial contact with Israel; the secondary and tertiary aspects of the boycott prohibit contact with companies that conduct business with Israel, including American companies.

At the hearing, Senate Finance ranking member Sen. Max Baucus (D-MT) stated that the Bush Administration "stands at the threshold of a difficult era for trade agreements in the Congress; it is unfortunate that this free-trade agreement may get caught up in the important reassessment." Baucus was likely referring to the current Congressional concern over a United Arab Emirates (UAE) company purchase of a British ports management firm, which would transfer control of several major U.S. ports to the UAE-based company. Sources have indicated that this concern could spill over into Congressional consideration of the U.S.-Oman FTA. Baucus added, however, that the "agreement has merit" but also noted that "Oman has ways to go" on labor issues. Schwab responded that Oman has enacted significant labor changes over the past year and has also continued its cooperation with the United Nations International Labor Organization (ILO).

On January 19, 2006, USTR Rob Portman and Oman's Minister of Commerce Sultan signed the U.S.-Oman FTA. Upon the agreement's entry into force, 100 percent of consumer and industrial products and 87 percent of agricultural goods will be duty-free. Oman will also provide: (i) substantial market access across all services sectors; (ii) a secure, predictable legal framework for U.S. investors operating in Oman; (iii) effective enforcement of labor and environmental laws; and (iv) intellectual property rights (IPR) protections. The FTA is another move forward toward the President's goal of completing a U.S.- Middle East Free Trade Area (USMEFTA) by 2013. Through USMEFTA, "the United States seeks to expand trade with and investment in Middle East countries to further their domestic reforms and the rule of law, protect intellectual property, and create a foundation for economic growth and prosperity." Since President Bush announced the USMEFTA Initiative in May 2003 the United States has signed FTAs with Israel, Jordan, Bahrain and Morocco, and is in formal FTA negotiations with the United Arab Emirates (UAE). Baucus' concerns and the problems facing the UAE ports deal do not bode well for future Middle Eastern agreements. On the other hand, USMEFTA's geopolitical concerns have trumped the FTA's labor issues and other potential obstacles to Congressional passage. It is likely that geopolitics will continue to push the Omani agreement through Congress, despite its shortcomings and other possible distractions.

USTR Expects to Conclude U.S.-UAE FTA Negotiations By End of 2006

Shaun Donnelly, Assistant United States Trade Representative (AUSTR) for Europe and the Middle East stated on March 2, 2006 that Free Trade Agreement (FTA) negotiations between the United States and the United Arab Emirates (UAE) "will remain on track" for an expected completion date at the end of 2006. Donnelly expressed optimism that the few outstanding issues on market access of agricultural goods, investment, and services will be resolved "in a timely manner" and noted that although Congress and the Bush Administration are at present

involved in a heated dispute with UAE's management of several U.S. ports, USTR considers the U.S.-UAE FTA "an important priority in U.S. trade." The next round of FTA negotiations will take place in the UAE in mid-March.

USTR Rob Portman has stated that the controversy surrounding a UAE firm's purchase of a port management company will not affect FTA negotiations. Some sources indicate, however, that the dispute will have a negative effect on the FTA negotiations and will sour congressional opinions of the bilateral agreement. The controversy centers on Dubai Ports World, owned by the UAE, and its February 13 purchase of British-based Peninsular and Oriental Steam Navigation (P&O). P&O North America manages commercial operations at the ports of New York, New Jersey, Baltimore, New Orleans, Miami and Philadelphia, as well as several other, smaller U.S. ports. Dubai Ports World's purchase of P&O would transfer control of commercial operations in these ports to the UAE-based firm. USTR Portman stated that the UAE "has been a solid partner [with the United States] in the war on terror" and added that the United States works "closely with them to screen container destined for the United States and United Arab Emirates." He also stated that the Department of Homeland Security, the Bureau of Customs and Border Protection (CBP), and the U.S. Coast Guard would continue to handle port security.

Members of Congress, however, have expressed concern with the purchase. Sens. Hillary Clinton (D-NY) and Robert Menendez (D-NJ) have introduced legislation meant to prohibit companies that are owned or controlled by foreign governments from acquiring port operations in the United States. Sens. Charles Schumer (D-NY), Tom Coburn (R-OK), Frank Lautenberg (D-NJ), and Christopher Dodd (D-CT) have circulated a letter to the Department of Treasury and Congress urging Treasury Secretary John Snow to reopen an investigation of the transaction. Treasury serves as the chair of the Committee on Foreign Investment in the United States (CFIUS), an interagency group that reviews foreign purchases of U.S. firms for their national security implications. Sources indicate that congressional response to the deal will likely affect the FTA negotiations and government sources have stated that the recently signed U.S.-Oman FTA will receive greater scrutiny when it undergoes congressional examination, due to the UAE ports deal. USTR's optimism might not be enough to encourage a wrap-up of negotiations with the UAE by the end of 2006 if UAE officials feel that the U.S. Congress does not sufficiently trust the UAE.

Thailand Suspends FTA Negotiations Because of Political Turmoil

Thailand has suspended formal Free Trade Agreement (FTA) negotiations with the United States due to Thailand's current political crisis. On February 24, 2006, Prime Minister Thaksin Shinawatra dissolved Thailand's Parliament "amid increasing calls for his resignation from the opposition and civic groups." Thaksin and his family have garnered controversy over their sale of a majority stake in the Thai telecommunications firm Shin Corporation to Temasek, the Singapore government's investment organization. Following Thaksin's dissolution of Parliament, the government decided to hold elections at the beginning of April. The election is

scheduled for April 2 but Thaksin has stated that elections could be delayed to allow more time for talks with opposition parties.

Karun Kittisataporn, Secretary of the Ministry of Commerce and Thailand's chief FTA negotiator, issued the statement that FTA negotiations had been suspended until the new administration is in place. Neither the United States nor Thailand have decided on a continuing date for talks although officials from both sides have stated that they will meet as soon as possible in order to conclude negotiations by the summer of 2006. The deadline is a new one as U.S. and Thai negotiators had been working under a self-imposed Spring 2006 deadline prior to the political crisis in Thailand. Kittisataporn stated that U.S. officials understood why Thailand elected to suspend the negotiations at this time.

Sources have stated that the recent political developments in Thailand will put a strain on the negotiations' timetable. Several officials have already opined that completing an FTA in the next several months is "virtually impossible." With no real timetable as to when elections will occur and when the new government will settle into place, each passing day adds uncertainty to an already jam-packed schedule of issues that the United States and Thailand must settle before finalizing the FTA. Indeed, with contentious issues such as sugar and services still on the negotiating table, achieving an agreement by the summer will take considerable energy and focus over the next several months should the two countries decide that they can conclude negotiations in such a limited amount of time.

MULTILATERAL

Multilateral Highlights

USTR: Progress in Russia WTO Accession Talks But Russia Must Fix IPR Enforcement, Customs Regulations

On March 29, 2006, United States Trade Representative (USTR) Rob Portman stated that the United States is “making steady progress with Russia on completing their bilateral accession agreement which is a part of Russia’s bid to join the World Trade Organization (WTO).” He added that both sides are “close to concluding our bilateral negotiations” and noted that the negotiations must move on two tracks: (i) completing bilateral agreements; and (ii) completing multilateral negotiations on “how Russia will transform its trade regime to conform to WTO rules.” Portman did state, however, that the remaining issues with Russia’s accession – both bilateral and multilateral – are “not new problems,” and that the United States has “been clear about those issues throughout the negotiations.” Portman noted that Russia must live up to the WTO rules and obligations that all WTO members accept, including sanitary and phytosanitary (SPS) standards, customs regulations and greater protection for intellectual property rights (IPR). These issues remain unresolved in the bilateral discussions between the United States and Russia.

On March 20-23, U.S. and Russian officials held formal bilateral negotiations and achieved some progress. Under WTO accession procedures, Russia must conclude bilateral market access deals with any WTO Member that requests negotiations. Following the successful conclusion of all bilateral negotiations, the most favorable concessions from each agreement will be incorporated into Russia’s WTO market access schedules for goods and services and included in Russia’s final accession package. Although officials could not release the U.S.-Russia negotiations’ details due to the “sensitive nature of negotiations,” they admitted that other unresolved issues include Russia’s refusal to allow foreign banks and insurance firms to open branches in Russia, high tariffs on civil aircraft imports, and Russia’s dual pricing policy for natural gas.

Russian officials set year-end 2006 as the revised target for Russia’s accession and must complete its bilateral negotiations with the United States and other WTO Members by that deadline in order to accede. SPS, IPR and financial services issues, however, still persist, as do several problems at the multilateral level of Russia’s accession negotiations. Unless Russia becomes more willing to make concessions on remaining bilateral issues and to commit to changes in Russian laws so as to conform them to WTO disciplines, it is unlikely that it will successfully complete bilateral and multilateral accession negotiations by its target date.

U.S., EU Request Consultations with China on Auto Regulations

On March 30, 2006, United States Trade Representative (USTR) Rob Portman announced that the United States has requested World Trade Organization (WTO) dispute settlement consultations with China based on its treatment of U.S. auto parts imports. The EU

simultaneously made a similar request related to Chinese import measures on European parts. Portman stated that “as a mature trading partner, China should be held accountable for its actions and be required to live up to its responsibilities,” and that China’s regulations on auto parts imports “appear to violate its WTO obligations.” He also stated that although the United States repeatedly has sought repeal of the measures, “the problem has not yet been resolved.” Portman expressed hope that the U.S. and EU requests “will lead to a speedy resolution of this issue.” The United States and the EU will coordinate their actions as they seek to resolve the dispute with China.

According to the EU and U.S. requests, China’s taxes on imported auto parts discourage automobile manufacturers in China from using imported auto parts in contravention of its WTO commitments. China recently implemented regulations that impose a tax on imported auto parts equal to the tariff on complete automobiles if the final assembled vehicle fails to meet certain local content requirements. These new rules thus discriminate against imported auto parts in favor of Chinese-manufactured parts in violation of China’s National Treatment obligations under the 1994 General Agreement on Tariffs and Trade (GATT). The U.S. and EU requests also allege that China’s policy violates the WTO’s Agreements on Trade-Related Investment Measures (TRIMS) and Subsidies and Countervailing Measures (ASCM), as well as specific commitments that China made as part of its WTO accession agreement. (During China’s WTO accession, China committed to eliminate all local content requirements and to lower and bind its tariffs on auto parts. The newly-imposed regulations appear to contradict these obligations.)

The United States has brought only one other WTO case against China. The parties resolved that dispute - involving China’s tax rebate on semiconductors - during the consultation phase. Under WTO rules, China has must respond to the requests within 10 days and enter consultations with the complaining WTO Members within 30 days. If the parties fail to resolve the dispute after a 60-day consultation period, the complainants – the United States and the EU - can request a formal WTO dispute panel. China has never participated as a respondent in a WTO dispute settlement panel process. However, both U.S. and EU officials indicated recently that they will no longer treat China with kid gloves at the WTO, opting for direct confrontation on WTO compliance issues, rather than “quiet diplomacy.” Thus, should China not address its auto regulations and take steps to address U.S. and EU concerns during the consultations phase, it is likely that both Members will request the establishment of a WTO Panel to resolve the case.

Little Movement in WTO Agriculture Talks

On March 24, 2006, Members of the World Trade Organization (WTO) completed a week of agriculture negotiations in Geneva that provided little movement and “growing skepticism.” The talks’ goal was to improve the current state of agriculture negotiations in order to complete full agricultural modalities by end-April – the target date established in the WTO’s 2005 Hong Kong Ministerial Declaration. Crawford Falconer, chair of the agriculture negotiations, stated that WTO Members were unable to achieve convergence during the negotiations, but that WTO Members had “serious, open discussions” on disciplines on food aid, the treatment of sensitive products, and special product/special safeguard mechanisms for

developing countries. Falconer stated that "in terms of actually defining the big numbers and moving on market access, and defining what the cuts will be on domestic support" there was no movement whatsoever.

WTO Members agreed at the December 2005 Hong Kong Ministerial that end-April would be the deadline for completion of modalities, formulas, and figures for tariff and subsidies reductions as part of the WTO's Doha Round of multilateral negotiations on agriculture and nonagricultural market access (NAMA). On March 10-11, 2006, trade ministers from the United States, the EU, Japan, Brazil, India and Australia met in London to continue agriculture discussions, but sources indicate that the parties achieved little. U.S. officials opine, however, that WTO Members can reach an agreement by the end of April as long as WTO Members "start stepping up to the plate" and making concessions. U.S. officials were likely referring to the EU, which has refused to amend its October 2005 offer on agricultural market access, despite harsh criticism from other WTO Members that it lacked ambition. The EU did not state at the Geneva meetings whether it is prepared to improve on its proposal. U.S. officials indicated that the EU has attempted to convince WTO Members that its offer would result in significant market access improvements, rather than offer new concessions.

According to published reports, Members failed to resolve their differences on agricultural "sensitive products," including tariff-rate quota (TRQ) commitments. U.S. officials are waiting for an EU proposal, under which it would consider improving its market access commitments for certain low-import volume products subject to TRQ commitments through a hybrid approach based on import levels and domestic consumption. The United States, on the other hand, is demanding that TRQ increases be based on domestic consumption, "which would lead to bigger quota volumes for most imports." Members also failed to bridge their differences on "blue box" domestic support classification. The EU has put disciplines such as product-specific spending caps on the table; the United States "is planning to classify most of its countercyclical payments as blue box support" and rejects the EU's suggested disciplines.

Most trade experts have opined that the sluggish pace of the multilateral trade negotiations jeopardizes completion of a comprehensive final trade agreement in the timeframe that the WTO's December 2005 Hong Kong Ministerial Declaration sets forth. Under that framework, Members are to achieve full modalities in agriculture and NAMA by the end of April 2006, so as to complete a final Doha Round agreement by early 2007. Agriculture negotiations have been at a virtual standstill since November 2005, and the latest agriculture talks in Geneva have failed to break the longstanding impasse. Should Members fail to make dramatic strides in the coming days, they will have little chance of meeting the April deadlines, and their recalcitrance will likely impair the future of a comprehensive Doha Round agreement.

U.S. Grants Permanent Normal Trade Relations to Ukraine, Paving Way for WTO Accession

On March 23, 2006, President Bush signed H.R. 1053 ("To authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Ukraine") into

law, normalizing trade relations with Ukraine. President Bush stated that the legislation is “going to create new opportunities, economic opportunities, for both countries.” Both the House and the Senate approved the bill in early March. The legislation authorizes the President to extend permanent normal trade relations (PNTR) to Ukraine and withdraw the application of the “Jackson-Vanik Amendment” of the 1974 Trade Act to Ukraine. Jackson-Vanik provides U.S. trade benefits to communist and former communist countries on a contingent basis, according to their emigration practices. President Bush noted that “a free Ukraine is a friend to America.”

President Bush also noted that he would continue to support Ukraine’s bid for accession to the World Trade Organization (WTO). On March 6, 2006, the United States and Ukraine signed a bilateral market access agreement – an essential step in Ukraine’s accession process. Ukraine’s commitments in the agreement include eventual duty-free entry of information technology and aircraft products and the harmonization of tariffs on chemical imports at very low or zero duty rates. The bilateral agreement also addresses concerns related to specific sanitary and phytosanitary standards (SPS) of priority to U.S. exporters, shelf-life standards, protection of undisclosed information for pharmaceuticals and agricultural chemicals (as required by the WTO), imports of information technology products with encryption, the operation of state owned firms based on commercial considerations, and reduction of export duties on non-ferrous and steel scrap.

Under WTO accession procedures, Ukraine must conclude bilateral market access deals with any WTO Member that requests negotiations. Following the successful conclusion of all bilateral negotiations, the most favorable concessions from each agreement will be incorporated into Ukraine's WTO market access schedules for goods and services and included in Russia’s final accession package. Ukraine’s negotiations with the United States and its WTO accession have progressed more smoothly than those for Russia, which still faces an uncertain accession timeframe due to unresolved bilateral and multilateral issues. Ukraine has already completed its bilateral deal with the United States and has been granted PNTR status.

Russia’s Bilateral Negotiations for WTO Accession Progressing; Multilateral Negotiations Require “Intensification” of Russian Efforts

On March 23, 2006, U.S. and Russian officials confirmed that they had achieved progress in bilateral negotiations as part of Russia’s accession to the World Trade Organization (WTO). The latest round of bilateral discussions began on March 20; under WTO accession procedures, Russia must conclude bilateral market access deals with any WTO Member that requests negotiations. Following the successful conclusion of all bilateral negotiations, the most favorable concessions from each agreement will be incorporated into Russia's WTO market access schedules for goods and services and included in Russia’s final accession package. In addition to the United States, Russia must still conclude bilateral negotiations with Australia and Colombia, resolve services issues with Moldova, and address specific concerns that Georgia has raised regarding Russian market access and telecommunications issues. Although officials could not release the U.S.-Russia negotiations’ details due to the “sensitive nature of negotiations,” they admitted that unresolved issues include Russia's refusal to allow foreign banks and

insurance firms to open branches in Russia, high tariffs on civil aircraft imports, Russia's dual pricing policy for natural gas, and "Russia's lax efforts in enforcing" intellectual property rights (IPR).

As part of its accession, Russia must also conclude multilateral negotiations and negotiate a working party report with the WTO that details Russian reforms to conform its trade regime to WTO requirements. Officials in the multilateral negotiations have indicated concern "about the continued lack of progress on Russia's multilateral terms of accession." Chair of the WTO's working party on Russian accession Stefan Johannesson stated that "a significant amount" of work remains to be done, and that Russia must intensify its multilateral work if it wishes to conclude all negotiations by the end of 2006. According to Johannesson, Russia and the WTO have addressed only 19 of the working party report's 50 sections, and that only three of the sections have been incorporated into the report: tariff exemptions, internal tax applications, and antidumping, countervailing duty and safeguard measures. He noted that contentious issues include tariff quotas, import restrictions and export duties.

Russian officials set year-end 2006 as the revised target for Russia's accession. If Russia wishes to complete its accession by that time, it will have to complete its bilateral negotiations with the United States and other WTO Members. Russia must also redouble its efforts to complete multilateral negotiations on its working party report – an essential aspect of its final accession package. Unless Russia intensifies its bilateral and multilateral efforts and agrees to address several unresolved areas, it will not likely meet its goal of a 2006 accession.

NAMA Meetings Produce Little Movement; Portman Criticizes "Minority" of EU Members For Holding Up Doha Round

Members of the World Trade Organization's (WTO) negotiating group on nonagricultural market access (NAMA) met on March 20-24, 2006 in Geneva to continue talks, but sources indicate that the group made little progress. Don Stephenson, Canadian ambassador to the WTO and head of the NAMA negotiating group, stated that there was "no resolution to the Bermuda Triangle of issues: the formula for reducing tariffs, the flexibilities for developing countries in taking lesser tariff cuts, and the treatment of unbounded tariff lines." He also noted that "WTO membership has divided into two camps," with developing countries "insisting on the principle of less than full reciprocity in tariff cuts" on one side, and with developed countries demanding increased market access on the other. Each side blames the other for the lack of movement in NAMA: developing countries insist that their industrial tariff cuts be followed by larger cuts from developed nations; developed nations insist that developing nations must agree to make cuts before any further movement can occur. Ministers from the United States, the EU, Japan, Brazil, India, and Australia met on March 10-11 to discuss NAMA but did not achieve any significant breakthroughs at that meeting.

Separately, United States Trade Representative (USTR) Rob Portman stated on March 22, 2006, that a small group of EU members were responsible "for holding up progress" in the Doha Round negotiations. He stated that "there are a minority of EU members states that don't believe

that there should be any movement at all in agriculture.” Portman stated, however, that he will continue to meet with EU ministers to urge their further movement in agricultural market access. These meetings are part of several that Portman and U.S. Secretary of Agriculture Mike Johanns will hold with EU officials to discuss WTO negotiations and the EU’s “flexibility” in the multilateral talks. Portman also noted that developing countries, including India and Brazil, “have a responsibility to provide new trade flows in industrial goods” and criticized the two countries for delaying NAMA and services negotiations.

The latest NAMA negotiations and Portman’s meetings have done little to advance the Doha Round’s goal of achieving full modalities in Agriculture and NAMA by the end of April 2006. WTO Director-General Pascal Lamy issued statements on March 22 calling on WTO Members to cooperate and work towards achieving modalities within the next month. His call might have come in response to signs of increased division among developed and developing countries in the NAMA negotiations – signs of a step backward, rather than forward, in this most critical of phases. Compounding these problems is the EU’s continued resistance to offer a more ambitious agricultural market access proposal. Unless Members achieve a dramatic breakthrough in both negotiating areas, the prospects of meeting the April deadlines – and thus forging a comprehensive final Doha Agreement by the end of 2006 – appear increasingly unlikely.

Latest U.S.-Russia WTO Accession Negotiations Have a “Positive Start,” But Many Issues Remain Unresolved

On March 21, 2006, Deputy Trade Minister Maxim Medvedkov, head of Russia's World Trade Organization (WTO) accession negotiating team, stated that although the latest round of bilateral market access negotiations between Russia and the United States “have gotten off to a positive start,” a number of contentious issues must still be resolved. Russia and the United States are holding talks in Geneva on the margins of the WTO's Working Group on Russian accession. Medvedkov stated that both sides are “in constructive and problem-solving discussions” and noted that they are “working in a cooperative mood.” However, according to Medvedkov, “Russia's refusal to allow foreign banks and insurance firms to open branches in Russia,” Russian tariffs on civil aircraft imports, its dual pricing policy for natural gas, and intellectual property rights (IPR) enforcement remain unresolved.

Discussions began on March 20 and will continue into the following week. Under WTO accession procedures, Russia must conclude bilateral market access deals with any WTO Member that requests negotiations. Following the successful conclusion of all bilateral negotiations, the most favorable concessions from each agreement will be incorporated into Russia's WTO market access schedules for goods and services and included in Russia’s final accession package. In addition to the United States, Russia must still conclude bilateral negotiations with Australia and Colombia. Medvedkov has stated that he expects those two agreements to be “formally wrapped up in the near term.”

On the branching issue, Medvedkov stated that Russia will maintain its Fall 2005 offer that would allow foreign firms to own up to 50 percent of Russia's banking and insurance sectors "in exchange for the United States giving up on the branching demands." The Russian government also has hinted that it is prepared to allow majority foreign ownership in individual firms but only "after a transition period." Medvedkov also addressed IPR, stating that Russia has "demonstrated [its] readiness and willingness to fully implement the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights [TRIPs agreement] and to prosecute violations in this sphere." In the last several months, the International Intellectual Property Alliance (IIPA) and several members of the U.S. Senate and House have denounced Russia's IPR efforts, with some in Congress opposing Russia's accession to the WTO because of the country's IPR record.

United States Trade Representative (USTR) Rob Portman has indicated that the United States hopes to complete bilateral negotiations with Russia by July 15-17, thereby likely allowing Russia to complete its long-delayed accession by the end of 2006. However, Russia's unwillingness to compromise on financial services branching and Congress' problems with Russia's IPR record might jeopardize this timeframe. Russia previously stonewalled the European Union's demands to allow branching during the countries' bilateral accession negotiations, with the EU finally giving up on the issue. And many in the U.S. Congress are unsatisfied with Russia's IPR efforts. Russia and the United States' failure to resolve these issues – or at least make significant progress – during the current round of negotiations would likely delay the conclusion of a bilateral agreement, and thus Russia's WTO accession, even further.

WTO Trade Policy Review: China Provides Little Information on Subsidies

The World Trade Organization's (WTO) latest trade policy review of China notes that "China's trade policy shows major gaps in China's notification of state subsidies to its industrial and agricultural sectors." The report states that China does not provide precise figures on its subsidies and has failed to provide notification of government subsidies to Chinese farmers. Under Article 25 of the WTO Agreement on Subsidies and Countervailing Measures (the SCM Agreement), China and all other WTO Members are obligated to report subsidies to domestic firms on a regular basis. The WTO Agriculture Agreement also obligates WTO Members to report subsidies to farmers on a regular basis. The WTO's Trade Policy Review Body, which is actually the WTO General Council operating under special rules and procedures, will discuss the report on April 10-12.

The WTO's trade policy review reports cover trade in goods and services, investment and intellectual property and are an integral part of the organization's Trade Policy Review Mechanism (TPRM) – one of the WTO's basic functions. The TPRM's objectives include "facilitating the smooth functioning of the multilateral trading system by enhancing the transparency of Members' trade policies." All WTO Members are subject to review under the TPRM. WTO rules mandate that the four Members with the largest shares of world trade (currently the EU, the United States, Japan and Canada) be reviewed every two years; the next

16 be reviewed every four years; and others be reviewed each six years. This is the first report for China.

According to the trade policy review report on the Chinese economy, total national government expenditure for agriculture increased between 2003 and 2004 from 123 billion yuan to 236 billion yuan. The report also states that in 2004, China spent 80 billion yuan on price supports and that China implemented new price and income support policies the same year. Even though China has not yet submitted a notification of its total amount of domestic agricultural support, the WTO predicts that farm subsidy spending increased from 2003 and 2004 although the growth is “negligible or even negative” because rural residents of China, mainly farmers, have higher taxes than urban Chinese residents. The WTO has not stated when it expects to receive China’s figures on domestic support. Several WTO Members – including the United States – have questioned China’s WTO compliance in several areas, including subsidies and transparency. The WTO’s trade policy review report may give further credence to these complaints. If so, the likelihood that the United States or any other WTO Member will file a formal dispute settlement complaint against China could increase.

WTO Trade Policy Review: U.S. Economy is “Key Engine of Global Growth”

In the World Trade Organization’s (WTO) latest trade policy review of the United States, the multilateral trading body commends the United States’ open market for foreign goods and investment and labels the U.S. economy a “key engine of global growth.” However, the report also cautions against the United States’ “growing protectionism” and states that “it is important to maintain [economic] openness by pre-empting possible protectionist sentiment.” On this front, the report finds “sector-specific restrictions” in the energy, mining, fishing, air transport, and financial services sectors. The report further notes that the United States has become “more involved” with bilateral free trade agreements (FTAs) that could negatively influence the WTO’s Doha Round of multilateral trade negotiations. The WTO’s Trade Policy Review Body, which is actually the WTO General Council operating under special rules and procedures, will discuss the report on March 22 -24.

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According to the latest trade policy review report on the U.S. economy, the United States has changed little in its trade regime since the WTO released its 2004 trade policy review. The report notes that most-favored-nation (MFN) tariffs averaged 4.9 percent, and that applied

agricultural tariffs increased to 9.7 percent. The report also finds that U.S. “trade defense measures,” including antidumping and countervailing duties, continue to serve as “important” trade barriers. The WTO acknowledges, however, the United States government’s efforts to decrease its trade defense measures. The report also notes that the significant increase in U.S. bilateral FTA involvement - from three negotiated FTAs in 2001 to 15 such agreements in 2005 - “raises concerns about administrative resources being distracted away from the multilateral system, trade or investment diversion, and interests being created that could complicate multilateral negotiations.” The report further finds that U.S. FTAs’ different rules of origin (ROO) requirements “add complexity to the [global] trade regime.”

Despite the WTO’s concerns regarding the United States’ aggressive pursuit of bilateral FTAs shifting the government’s focus and resources away from multilateral trade negotiations, it is unlikely that the United States will alter its strategy. First, the United States has consistently maintained that bilateral FTA negotiations do not distract or interfere with its multilateral trade objectives. Moreover, the United States believes that its “competitive liberalization” strategy – whereby the United States will pursue multiple bilateral FTAs to motivate its trading partners to pursue broader market liberalization at the bilateral, regional and multilateral levels – has proven highly successful. Thus, the U.S. government would be reluctant to alter its “winning” game plan.

G-6 London Meeting Results in No Significant Progress

On March 10-11, 2006, members of the “Group of Six” (G-6) – Australia, Brazil, India, Japan, the European Union, and the United States – met in London to discuss the World Trade Organization’s (WTO) latest round of multilateral trade negotiations. Representatives from the six countries focused on tariffs for agricultural and industrial goods. The talks’ main goal, according to WTO Director-General Pascal Lamy, was to “narrow the range of numbers” for the proposed tariff cuts.

The first day resulted in little progress. The trade ministers shared their goals and objectives for the Doha Round. The second day, which was intended to entail more substantive discussions, failed to produce any significant gains. Members failed to submit new agricultural market access proposals or NAMA offers. The ministers urged their counterparts to reconsider their existing offers in a way that would facilitate compromise. On agriculture, the EU maintained that the United States should agree to a minimum 65 percent reduction in “amber box” spending, to come close to matching the EU’s offer for a 75 percent reduction in amber box support.

Amber and blue box spending limits remain a point of contention between the United States and other WTO members. The United States insists that it used the 1999-2001 period as the basis for determining domestic support cuts, but other WTO members want 1995-2000 to serve as the base period. Also, Brazil has urged the United States to accept a spending cap of 1.8 percent or less of total domestic agricultural production. The United States, however, refuses to go lower than a 2.5 percent spending cap on blue box support.

Reactions to the G-6 meeting were mixed. Brazilian Foreign Minister Celso Amorim questioned the pace at which Members are conducting the negotiations. "We have been working in an incremental way," Amorim declared, "and personally I don't believe that we can get to an agreement by incremental steps." Amorim's comments echo those of most trade experts who have opined that the sluggish pace of the multilateral trade negotiations jeopardizes completion of a comprehensive final trade agreement in the timeframe that the WTO's December 2005 Hong Kong Ministerial Declaration sets forth. Under that framework, Members are to achieve full modalities in agriculture and non-agricultural market access (NAMA) by the end of April 2006, so as to complete a final Doha Round agreement by early 2007. The lack of significant progress made during the London G-6 meeting makes the goal of finalizing agriculture and NAMA by the end of April – and thus completing the entire Doha agreement - less tenable.

USTR: April 30 is 'Drop Dead Date' For WTO Talks

On March 8, 2006 United States Trade Representative (USTR) Rob Portman stated that April 30 was the "drop dead date" for reaching a broad agreement in the World Trade Organization's (WTO) Doha Round of multilateral trade talks. Portman indicated that any agreement after April 30 would not allow negotiators enough time to conclude a comprehensive agreement by early 2007. Because Presidential Trade Promotion Authority is set to expire in mid-2007, USTR has maintained that any agreement must be completed in 2006 to allow sufficient time for congressional approval. Nevertheless, Portman emphasized that the United States will continue to negotiate even after April 30 if the negotiating modalities in agriculture and non-agriculture market access were not met.

Members of Congress have expressed concern that other WTO Members – particularly the EU – have not matched the U.S. offer on agriculture. Many are frustrated by the EU's position on agricultural market access and worry that the European import tariffs and sanitary and phytosanitary (SPS) barriers limit U.S. agricultural competitiveness in the EU. The House Agriculture Committee has advised the administration "to do everything we can to improve market access" for the U.S. agriculture sector. Portman also stated that he does not expect any major breakthrough in the WTO talks at the G-6 ministerial meeting in London this week.

Assuming that TPA's mid-2007 expiry continues to constrain the Doha Round negotiations, the United States is quite right that April 30 is a "drop dead" date for any chance of completing a comprehensive multilateral trade agreement in time. Indeed, many experts wonder whether members can complete an agreement by early 2007 if they even meet the April deadlines. Should the WTO agriculture negotiations remain deadlocked and the G-6 meeting result in nothing more than further "stock-taking," the completion of full modalities in agriculture and NAMA will be further diminished, and the overall agreement will be in greater doubt. .

G-6 Paris Meeting Offers Little Movement in Agriculture Talks

After four days of meetings in Paris on March 1, senior officials of the Group of Six (G-6) showed few signs of changing their negotiating positions in World Trade Organization (WTO)

Doha Round agricultural talks. Although there was some movement in the area of domestic support, little progress was made in the areas of market access and export competition.

EU officials have stated that the EU is willing to improve upon its offer made in October 2005. The EU is willing to cut its Amber Box cap by 75 percent, provided that the United States agrees to a 65 percent reduction. In October, the EU had stated that it was prepared to cut its Amber Box support by 70 percent in response to a U.S. proposal to reduce its Amber Box spending cap by 60 percent. EU officials also stated that the EU was prepared to reduce the current limit on *de minimis* support by 80 percent for non-product-specific support, and to eliminate product-specific *de minimis* support completely, provided that the United States makes the exact same reductions and cuts. In its October 2005 proposal, the EU was prepared to cut *de minimis* support by at least 65 percent. The EU is also prepared to reduce the proposed cap on the Blue Box category of support from 5 percent of the national value of agricultural production to 2.5 percent. Sources indicate that U.S. officials were less than accepting of the EU's new proposals and trade officials stated that "the United States didn't like it." They also opined that WTO Members will likely not "see much further movement from [the EU] on domestic support cuts."

Talks on domestic support also centered on Green Box support. The EU and the United States opposed a proposal from the Group of 20 (G-20) developing countries, led by Brazil and India, that would have expanded the types of subsidies in the Green Box category for development purposes. EU and U.S. officials stated that such changes to the Green Box would make it easier for poor countries to justify trade-distorting subsidies.

Senior G-6 officials will meet again in Geneva on March 8 to continue agriculture talks. The Paris meeting was held in preparation for an important G-6 ministerial meeting to be held on March 10-12 in London. The focus of that meeting will be on Doha negotiations on agriculture and non-agricultural market access (NAMA). United States Trade Representative (USTR) Rob Portman has already indicated that the United States will not table a new agricultural proposal at the London meeting but noted that the United States is "always negotiating and willing to negotiate." He stated that the United States has "made it clear that [it] needs to see more in terms of the ability of U.S. farmers and ranchers to sell their products overseas." Sources have indicated that the little convergence at the Paris meeting has made securing agricultural and NAMA modalities by the April 30 deadline a hard goal to reach. As the April deadline approaches and as WTO Members give one another even frostier receptions, achieving modalities in the next month will be a hard goal to attain unless WTO Members radically change their negotiating strategies.

WTO Members Begin Circulating Services Plurilateral Requests

On February 28, 2006, World Trade Organization (WTO) Members began circulating joint requests for market access concessions as part of the Doha Round services negotiations. The WTO has not made the plurilateral requests public and has only circulated them to those countries that have been asked to make market access concessions. The Office of the United

States Trade Representative (USTR) stated that the United States participated in twelve joint requests: telecommunications, financial services, computer and related services (CRS), distribution services, express delivery services (EDS), energy services, construction, legal services, architectural and engineering services, audiovisual services, and education. The EU stated that it was involved in 11 plurilateral requests including maritime services and environmental services.

According to Indian officials, India leads a group of developing countries that will submit a plurilateral request to developed countries for improved “mode 4” (cross-border movement of professionals) commitments. USTR officials have stated that the United States “would not be surprised if [it] was a recipient of a mode 4 request” and have not ruled out U.S. negotiations on the matter. Sources indicate that WTO Members will circulate more plurilateral requests over the next several days. The WTO Members making the proposals will discuss them at the late March- early April “services cluster” meetings in Geneva.

U.S. officials note that the collective requests in which the United States is a participant seek: (i) the removal of foreign investment limitations; (ii) restrictions on the form of establishment; (iii) prohibitions on cross-border supply of services; (iv) nationality requirements for corporate employees; (v) discriminatory regulatory policies; (vi) and restrictions on competition. WTO officials have not listed the countries that joined the United States in these requests or the countries that received the requests. EU officials note that the EU will not join requests in sensitive sectors like audiovisual services, education, health services, and public services. On telecommunications, the EU seeks commitments on the provision of fixed voice telephony, mobile data and high-speed internet services, as well as the establishment of foreign operators through the elimination of foreign equity restrictions. The EU’s goal for the financial services request is to enable EU financial service providers to set up operations abroad and provide services directly to other countries from their European locations.

Over the next several days, more plurilateral requests will emerge, and WTO Members will begin to review the February 28 requests. Because the Hong Kong Ministerial Declaration mandates that Members’ must submit their revised services offers by July 31, 2006, groups will want to engage in plurilateral negotiations quickly thereafter. Thus, after all collective requests are received and considered by the countries to which they are addressed, intensive meetings of the most engaged countries will begin. This process should begin in the third or fourth week of March and continue until July. The multilateral processes will be supplemented by bilateral meetings, in which individual WTO Members will seek commitments beyond the plurilateral requests. Submission of the collective requests is therefore only the start of a negotiation lasting several months and it is not the last word of the requesting countries: they will pursue bilaterally objectives not covered by the collective requests.

Although many WTO Members have stressed that plurilateral offers are not meant to take the place of bilateral offers, the plurilateral process is the only possible means whereby Members could complete the Doha Round services agreement before the end of 2006. Moreover, considering the failures of the traditional bilateral request-offer process, many WTO Members

and interested observers hope that the plurilateral process might elicit more substantive and ambitious services offers. Should these efforts fail, the likelihood that Members will submit their revised services offers by the July 31 deadline is slim.