US & Multilateral Trade and Policy Developments

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US General Trade Policy

U.S. Congress Approves Trade Promotion Authority, Extensions of Trade Preference Programs, and Changes to US Trade Remedy Law

On June 24 and 25, respectively, the U.S. Congress passed (i) the *Bipartisan Congressional Trade Priorities and Accountability Act of 2015* (TPA); and (ii) a bill comprised of the *Trade Preferences Extension Act of 2015*, the *Trade Adjustment Assistance Enhancement Act of 2015* (TAA), and the *Leveling the Playing Field Act*. Both bills have been sent to President Obama to be signed into law. Congress will now recess until July 7, and thereafter will convene a conference committee in an effort to reconcile differences in the House- and Senate-passed versions of the *Trade Facilitation and Trade Enforcement Act of 2015* ("Customs Bill").

Trade Promotion Authority

After the House of Representatives failed on June 12 to approve the Senate-passed *Trade Act of 2015* ("*Trade Act*"), which contained both TPA and TAA, the Republican congressional leadership reached an agreement with President Obama and pro-TPA congressional Democrats on an alternative plan to advance TPA. Under the plan, pro-TPA Democrats from both chambers agreed to support a standalone TPA bill in exchange for assurances that the Republican leadership would hold votes on TAA shortly thereafter. On June 18, the House Republican leadership introduced Title I of the *Trade Act* (TPA) as standalone legislation, and the House voted 218 to 208 to approve the bill with 190 Republicans and 28 Democrats voting in the affirmative. The number of House Democratic votes in favor of TPA was higher than expected, as was the number of House Republican votes in opposition to TPA.

On June 23, the Senate voted 60 to 37 to invoke cloture on the House-passed bill, with 47 Republicans and 13 Democrats voting in the affirmative. Of the 62 Senators who voted in favor of the *Trade Act* on May 22, Sens. Ben Cardin (D-MD) and Ted Cruz (R-TX) were the only Senators who changed positions by opposing cloture on the standalone TPA bill on June 23. Sens. Robert Corker (R-TN), Mike Lee (R-UT), and Robert Menendez (D-NJ) did not vote on the cloture motion. The following day, the Senate approved the TPA bill by a vote of 60 to 38, with 47 Republicans and 13 Democrats voting in the affirmative. Sens. Mike Lee (R-UT) and Marco Rubio (R-FL) did not vote on final passage of the bill. Once signed into law, the bill will make TPA effective through July 1, 2018, and authorize an extension of TPA through July 1, 2021 if the President so requests and neither chamber of Congress passes a resolution disapproving the extension.

Trade Preferences, Trade Adjustment Assistance, and Leveling the Playing Field Act

Immediately after passing TPA, the Senate voted 76 to 22 to approve the House-passed *Trade Preferences Extension Act of 2015* (H.R. 1295), which was amended by Senate Majority Leader Mitch McConnell (R-KY) to include TAA and a set of changes to US trade remedy law known as the *Leveling the Playing Field Act*. 32 Senate Republicans and 44 Senate Democrats voted in the affirmative. The House then passed H.R. 1295 on June 25 by a vote of 286 to 138, with 111 Republicans and 175 Democrats voting in the affirmative. Once signed into law, H.R. 1295 will, *inter alia*, (i) reauthorize the Generalized System of Preferences (GSP) through December 31, 2017, and provide retroactive duty relief for eligible articles imported since the program's lapse on July 31, 2015; and (ii) extend the *African Growth and Opportunity Act*, the *Hemispheric Opportunity through Partnership Encouragement Act*, and the *Haiti Economic Lift Program* through September 30, 2025.

Trade Facilitation and Trade Enforcement Act ("Customs Bill")

On June 12, the House voted 240 to 190 to approve a version of the Customs Bill which differs significantly from the Customs Bill passed by the Senate on May 14. As a result, the House and Senate will convene a conference

committee on the Customs bill shortly after Congress returns from recess on July 7. A conference committee is a temporary panel of members of the House and the Senate formed for the purpose of reconciling differences in legislation that has passed both chambers. If the conferees are able to reach an agreement on the Customs Bill, the resulting conference bill will have to be approved by both chambers.

Given the significant differences between the House and Senate Customs bills, finding a compromise bill that can pass both chambers appears unlikely. House Ways and Means Committee Chairman Paul Ryan (R-WI) has specifically called for two controversial provisions in the Senate bill to be removed in conference:

- The *Currency Undervaluation Investigation Act of 2015* ("Currency CVD"), which would direct the Department of Commerce to consider undervalued currency as a prohibited export subsidy for purposes of US countervailing duty (CVD) law; and
- The *American Manufacturing Competitiveness Act*, which would reform the Miscellaneous Tariff Bill process by allowing companies to submit proposals for duty suspension directly to the International Trade Commission while reserving final approval for Congress.

In the event that a compromise can be reached, these controversial aspects of the legislation will likely be watered-down or removed outright. However, it is unlikely that the Republican leadership will be willing to invest significant time and energy to forge such a compromise now that it has achieved its primary objective of enacting TPA.

In the event that Congress does approve the Customs bill, the following notable provisions are likely to be included:

- **Investigation process for AD/CVD Evasion**. The ENFORCE Act, which is included in the Senate bill, would require U.S. Customs and Border Protection to adhere to certain investigating procedures and deadlines when responding to allegations of antidumping (AD) or countervailing duty (CVD) evasion. The House bill contains similar provisions, but would assign responsibility for the investigations to the Department of Commerce.
- **Waiver provisions for "Tier 3" countries**. The House bill would amend Section 106(b)(6) of the TPA law, which states that legislation to implement US FTAs with countries in "Tier 3" of the US State Department's Trafficking in Persons Report will be ineligible for the expedited (*i.e.*, "fast-track") legislative procedures established by TPA. As written, the provision would complicate congressional approval of the Trans-Pacific Partnership (TPP), due to Malaysia's status as both a TPP party and a Tier 3 country. The House bill would add a waiver process to this provision, allowing trade agreements with Tier 3 countries to remain eligible for the expedited TPA procedures "if the Secretary of State submits to the appropriate congressional committees a letter stating that [the Tier 3 country] has taken concrete actions to implement the principal recommendations in the most recent annual report on trafficking in persons." Given the original trafficking provision's implications for the TPP, it is expected that the waiver provision will be attached to other, more viable legislation if the conference on the Customs bill is unsuccessful.

Implications of TPA Passage for the Trans-Pacific Partnership (TPP)

The enactment of TPA and the resulting assurances that Congress will vote "up or down" on TPP-implementing legislation will likely precipitate the conclusion of the TPP negotiations in mid- to late summer of 2015. On June 10, US Trade Representative Michael Froman indicated that TPP negotiators had reached the limit of what could be achieved without TPA: "It's been very clear that none of the other countries are willing to come to the table, have another meeting and put their final offers on the table until they see us having TPA." With this obstacle now removed, a final meeting of TPP ministers could take place in late July in a best-case scenario. The ministerial could be delayed past July, however, if the United States and Japan are unable to finalize a bilateral agreement on market access for US agricultural products in the coming weeks. Japanese Finance and Economy Minister Akira Amari stated on June 24 that such an agreement must be finalized before the ministerial can take place. While a US-Japan agreement might be reached in the coming weeks, further delays cannot be ruled out.

The ministerial likely will result in a finalized TPP agreement, or alternatively, an agreement in principle on the remaining substantive issues, leaving technical details to be finalized in subsequent meetings. Once an agreement is reached on the TPP text, the final text must be published for 60 calendar days before President Obama can sign the agreement, pursuant to the new TPA law. Thus, in a best case scenario, President Obama could sign the agreement in early September and submit implementing legislation to Congress shortly thereafter.

Given this timeline, Congressional approval of TPP-implementing legislation is increasingly unlikely to occur before the end of the year. If the TPP is finalized in late July, a final vote on TPP-implementing legislation would not be required under the TPA timelines until the spring of 2016, at the earliest. This vote could be further delayed due to the US presidential elections, which tend to heighten political tensions and discourage major legislative initiatives. To avoid this outcome, Congress would have to advance the implementing legislation far more quickly than is required under TPA. Doing so would likely be politically challenging. Thus, while the TPP is expected to be concluded this summer, there is a real chance that US implementation of a final TPP agreement will not occur until 2017, under a new US President.

US General Trade Policy Highlights

US Trade Representative Removes Paraguay from Special 301 Watch List

On June 18, 2015, the Office of the United States Trade Representative (USTR) removed Paraguay from the Special 301 Watch List, citing new commitments made by the Government of Paraguay under a recently-signed memorandum of understanding (MOU) with the United States on intellectual property rights (IPR). The United States and Paraguay began negotiating the MOU in March of 2014, and signed the finalized MOU during a June 18, 2015 meeting of the United States-Paraguay Partnership Dialogue at the U.S. Department of State.

USTR's Special 301 Report is published annually pursuant to Section 182 of the Trade Act of 1974 ("Trade Act"), which requires USTR to identify countries that allegedly (i) deny adequate and effective protection of IPR; or (ii) deny fair and equitable market access to US persons who rely on IPR protection. Countries placed on the Watch List in the Special 301 Report are those in which particular problems allegedly exist with respect to IPR protection, enforcement, or market access for persons relying on intellectual property.

According to a statement issued by USTR, Paraguay committed under the new MOU "to take specific steps to improve its IPR protection and enforcement environment," and therefore has been removed from the Watch List pursuant to an Out-of-Cycle Review (OCR). An Out-of-Cycle Review is a process by which USTR seeks to address specific IPR issues of concern in a particular country's market outside of the typical time frame for the annual review. A successful resolution of these specific issues of concern can lead to a positive change in a country's Special 301 status outside of the typical time frame for the annual review.

Click **here** for a copy of USTR's June 18 announcement.

Free Trade Agreement Highlights

TPP Negotiating Round in Guam Concludes; Ministerial Meeting Postponed Due to TPA Timing

From May 15 to 26, 2015, the Trans-Pacific Partnership (TPP) countries held a negotiating round in Guam to lay the groundwork for an eventual ministerial, at which TPP ministers are expected to make the key political decisions needed to finalize the agreement. TPP ministers tentatively were scheduled to meet in Guam from May 26 to 28; however, when it became clear that the US Congress would not enact Trade Promotion Authority (TPA) legislation until at least mid-June, the ministerial was postponed indefinitely. As a result, negotiators continued to meet through May 28 to work on technical issues and to continue the "legal scrub" of the chapters to which the parties already have agreed.

No major breakthroughs were expected or reported during the Guam round. Rather, the primary aim of the round was to refine and narrow the options that will be considered by ministers when they meet to resolve major outstanding issues. To that end, chief negotiators and various working groups met in Guam to discuss, inter alia, the following outstanding matters:

Textile Rules of Origin. Textile and apparel negotiators reviewed a new, unified proposal tabled by the United States, Mexico, and Peru that is based on the yarn-forward rule but reportedly also includes hundreds of more detailed and product-specific rules of origin. In the new proposal, the United States reportedly has backed away from its previous offer to allow third-country sourcing of some textile products that contain "gimped yarn," a material commonly found in hosiery and socks. The new proposal, which reflects previous demands by Peru, reportedly would require gimped yarn to be sourced from within the TPP region in order for the resulting finished product to receive preferential tariff treatment. Although the tabling of a unified proposal by the United States, Mexico, and Peru represents progress in the textile negotiations, significant differences between Vietnam and the Western Hemisphere countries reportedly persist, largely due to Vietnam's continued demands for various exceptions to the yarn-forward rule. Whether such exceptions will be granted likely will be decided at the ministerial level; however, allowing at least some exceptions might be essential to convince Vietnam to accept the agreement's labor and intellectual property (IP) standards.

Generic Pharmaceutical Exemption. Negotiators debated the scope of the "Bolar exemption" – an exemption from patent infringement claims that allows generic pharmaceutical companies to conduct the required testing and clinical trials for a generic drug before the patent on the equivalent brand-name drug has expired. Specifically, negotiators debated whether this exemption should apply only to the testing of drugs that will be sold domestically, or also to the testing of drugs that are destined for export. U.S. law currently limits the scope of the exemption to domestically-sold drugs; however, countries with large generic drug industries, such as Canada, reportedly are pushing for the exemption to apply to exports as well. While controversial, sources expect that this issue might be resolved by chief negotiators and thus will not need to be addressed at the ministerial level.

Transition Mechanism for Pharmaceutical IP Rules. Negotiators continued to debate the proposed use of a fixed timeline or, alternatively, a development-based "transition mechanism," to determine when developing countries will be required to enforce the TPP's new IPR protection standards for pharmaceuticals. The United States in 2013 proposed a development-based mechanism but reportedly has shown openness to a fixed timeline, which is strongly supported by the US brand-name pharmaceutical industry. This politically-sensitive decision is expected to be made at the ministerial level; however, sources indicated during the Guam round that a growing consensus is building around the fixed timeline proposal, even as the details of such a proposal remain uncertain. For example, negotiators continued to debate whether, under the fixed timeline, TPP countries should be required to implement all of the necessary IP reforms by a single target year, or whether reforms could be implemented incrementally over a series of target years. Also at issue is whether the fixed timeline should be uniform or negotiated on a country-by-country basis.

Standards for Pharmaceutical IP. In 2013, the United States proposed that the TPP should contain two sets of standards for pharmaceutical IPR protection: (i) a lower set of standards to be implemented by low-income countries, and (ii) a higher set of standards to be implemented by developed countries. However, sources indicated during the Guam round that a growing consensus is building around an alternative proposal, which would establish a single set of standards for all TPP countries. Low-income countries eventually would have to comply with the single standard but would be provided an implementation period in which to do so through one of the transition mechanisms described above.

Negotiators reportedly discussed proposals pertaining to other politically-sensitive issues that likely will be decided by ministers. Such issues include (i) various proposed exemptions from the disciplines contained in the state-owned enterprise and government procurement chapters; (ii) the length of the data exclusivity period for biologic drugs; and (iii) the permissibility of patent linkages and patent term extensions. Many of these discussions reportedly were held

in a bilateral format, presumably to address the specific problems that each country might have with the proposed texts.

Next Steps

Since postponing indefinitely the ministerial planned for May 26 to 28, TPP countries have not made any further announcements regarding future meetings. However, the timing of the ministerial depends on when Congress ultimately enacts TPA. In a best-case scenario, the House could approve TPA by mid-June, potentially enabling a ministerial to take place in early- to mid-July. Enactment of TPA would unblock the sensitive market access negotiations – namely those between the United States and Japan, but also those with Canada, which has made it clear that it will not make concessions in the sensitive areas of poultry and dairy until TPA is enacted. The results of the market access negotiations then are expected to determine the concessions that each country is willing to make on rules. While enactment of TPA is considered essential to the timing and outcome of these negotiations, the large number of outstanding details suggests that the next ministerial could result in an "agreement in principle" on the TPP rather than a finalized text, leaving minor technical details to be resolved in subsequent negotiations.

Update on US-China Bilateral Investment Treaty (BIT) Negotiations

From June 23 to 24, 2015, senior United States and Chinese officials met to discuss the status of negotiations toward a US-China Bilateral Investment Treaty (BIT), and in particular the proposed "negative lists" that were exchanged by the parties on June 8 at the 19th BIT negotiating round in Beijing. US Treasury Secretary Jacob Lew, US Trade Representative (USTR) Michael Froman, Chinese Vice Premier Wang Yang, and Minister of Commerce Gao Hucheng participated in the discussions, which occurred at the seventh annual US-China Strategic and Economic Dialogue (S&ED) in Washington, DC.

US BITs follow a negative list approach under which all sectors of the parties' economies will be covered by the agreement's disciplines unless specific reservations are taken. The parties must negotiate any exceptions to BIT rules and include them in the negative list of "Non-Conforming Measures." This approach has significant implications, because (i) any measures taken after the BIT enters into force are automatically covered by all BIT rules; and (ii) US BITs do not contemplate changes, so adding new exceptions would require re-opening the treaty. On April 27, USTR Froman stated that China's negative list for the BIT should contain fewer restrictions than its Negative List on Foreign Investment Access into the Shanghai Free Trade Zone (FTZ) or the most recent revision of the Chinese foreign investment catalog.

At the S&ED, USTR Froman and Minister Hucheng discussed the quality of both the US and Chinese negative list offers and how they could be improved. A Chinese Ministry of Commerce (MOFCOM) official who attended the S&ED indicated that China's negative list offer contained fewer restrictions than the Shanghai FTZ list. However, the Obama Administration's lack of an official reaction to the initial offer has caused some US observers to speculate that the offer seeks to maintain a large portion of China's national-level restrictions.

At the conclusion of the S&ED, Secretary Lew announced that the parties had committed to intensify the BIT negotiations and exchange improved negative list offers in early September 2015. The parties have agreed to hold two BIT negotiating rounds before September, which are expected to focus on improving the negative lists. However, China might delay submission of the revised negative list offer if the Trans-Pacific Partnership (TPP) has not been finalized by September, as China may wish to view the investment commitments made by TPP parties and structure its revised offer accordingly.

Officials attending the S&ED did not comment on the status of the core text of the BIT, which Minister Hucheng described in March 2015 as "basically complete". USTR confirmed on June 19 that negotiations on the core text were ongoing as of the Beijing round in June, but did not elaborate on nature or extent of the outstanding issues. Chinese officials attending the S&ED expressed optimism that the BIT could be completed during President Obama's term, but this is unlikely given the current state and sensitivity of the negotiations.

Multilateral Highlights

ITA Participants Fail to Make Breakthrough on Product Coverage

Recent meetings of participants in the negotiations to expand the product coverage of the Information Technology Agreement (ITA) have failed to make a breakthrough. The negotiations have been blocked since the end of last year because of China's reluctance to accede to demands from South Korea and Taiwan to include flat screen monitors in the list of products for which tariffs would be eliminated. This impasse has persisted despite the fact that the United States and China reached a bilateral deal on product coverage in November 2014 which, it was hoped, could be followed quickly by agreement among all participants to conclude the negotiations.

Recent negotiations have taken place among a very limited number of participants (namely the United States, the European Union, Japan, China, South Korea, and Taiwan) to try to overcome the difficulty of including flat screen monitors in the product list for tariff elimination – either (i) by persuading China to accept their inclusion or (ii) by persuading South Korea and Taiwan to accept their exclusion and their replacement by other consumer electronic products of particular export interest to those countries.

An expanded ITA aims to eliminate tariffs on more than 200 additional high-technology products, including certain medical equipment, GPS devices, video game consoles, computer software, and next-generation semiconductors. According to the Office of the US Trade Representative (USTR), examples of the levels of tariffs in participating countries that would be eliminated under the ITA are:

- Next generation semiconductors: tariffs of up to 25%
- Magnetic resonance imaging (MRI) machines: tariffs of up to 8%
- Computed tomography (CT) scanners: tariffs of up to 8%
- Global positioning system (GPS) devices: tariffs of up to 8%
- Printed matter/cards to download software and games: tariffs of up to 10%
- Printer ink cartridges: tariffs of up to 25%
- Static converters and inductors: tariffs of up to 10%
- Loudspeakers: tariffs of up to 30%
- Software media, such as solid state drives: tariffs of up to 30%
- Video game consoles: tariffs of up to 30%

At a meeting of participants in New York on May 13, China renewed its opposition to including monitor screens in a final deal. China said that other participants are making "unrealistic requests" by (i) singling out individual products that are of particular sensitivity to China's own efforts to support its domestic industry; and (ii) refusing to accept China's offer to substitute other products in place of liquid crystal display screens on the ITA list. The United States said that its industries were becoming impatient with the lack of progress. The ITA negotiations were raised again on the side-lines of the recent APEC summit, but progress did not occur. The next opportunity to address the ITA will be the OECD Ministerial meeting on June 4, but it is expected that this meeting will focus solely on the Doha negotiations; as such, expectations of progress on ITA are low.

The United States has reached out to WTO Director-General (DG) Roberto Azevêdo to address the ITA negotiations in the context of his broader consultations in Geneva on the Doha market access issues. DG Azevêdo has accepted this challenge and has consulted with the key participants since January, but some WTO Members feel that inclusion of the ITA negotiations could complicate the Doha negotiations. India, for example, vocally opposes expansion of

tariff elimination on information technology and electronics products because the country seeks to develop these industries domestically. Although it is not a participant in the ITA negotiations, India will gain leverage to oppose such a deal if ITA products are highlighted for attention in the Doha negotiations on Non-Agricultural Market Access (NAMA).

Update on the Status of the Doha Negotiations

At a meeting of World Trade Organization (WTO) Heads of Delegation on June 1, WTO Director-General (DG) Roberto Azevêdo gave a sombre assessment of the Doha negotiations, which appear, once again, to be deadlocked. Attention over the past two months focused on attempts to reach political agreement on the parameters needed to move the market access components of the Round forward to the point where technical negotiations can occur on Agriculture, Non-Agricultural Market Access (NAMA), and Services. These efforts have failed, notably in finding acceptable tariff-cutting formulas for Agriculture and NAMA, methods to cut domestic support, and mechanisms to provide flexibilities for developing countries in Agriculture.

DG Azevêdo concluded at the June 1 meeting that Ministerial guidance is needed to put the negotiations back on track, alluding to the forthcoming meeting of selected Trade Ministers at the Organisation for Economic Co-operation and Development (OECD) on June 4. However, the chances of achieving a breakthrough at the OECD have been reduced by the reported decision of US Trade Representative Michael Froman not to attend the meeting. On June 1 in Geneva, the United States took a hard line, suggesting that its patience with the Doha negotiations might be running out and that it is veering towards writing them off completely. The United States said that the 10th WTO Ministerial Conference in Nairobi in December 2015 will be "make-or-break" for Doha, and that the negotiations should not be pursued absent consensus. Other delegations, including the European Union, said that they continue to believe that a breakthrough can be found. The European Union called for "realistic" and "doable" outcomes, saying that it is open to negotiations in all areas. However, China, India and the Group of 33 developing country food importers repeated their demands for development flexibilities on market access and domestic support in agriculture – the precise issues about which the United States repeatedly has stated its unwillingness to compromise. It is very difficult to envision how DG Azevêdo, even with the help of Ministers, will be able to craft a way forward.

The key issues that need to be addressed are the following:

- **Tariff cutting formulas for Agriculture and NAMA.** The Round was launched with a mandate to cut tariffs using the so-called "Swiss formula," which produces much larger cuts to high tariffs than to low tariffs. Because developing countries generally have higher tariffs than industrialized countries, developing countries felt that this mandate was unfair unless they were granted extensive development flexibilities to continue to protect their farmers and industries. The United States and a number of other food-exporting Members refused to accept that those flexibilities could be used in full by advanced developing countries such as China and India. The impasse over this point was one of the main causes of the breakdown in negotiations in 2008. Recent attempts have been made by the Chairmen responsible for conducting the negotiations on Agriculture and NAMA to shift away from the Swiss formula to other tariff-cutting approaches, such as average tariff cuts. These would produce much smaller tariff cuts and therefore, in the view of the United States and the European Union, would not warrant advanced developing countries being offered extensive, or even any, development flexibilities. However, developing countries, including some of the most advanced among them, are refusing to abandon the development flexibilities that were on the table in 2008.

- **Cuts to domestic agricultural support.** The 2008 proposal was to use a "tiered" formula that would result in steeper cuts to higher levels of domestic support. As in the case of tariffs, developing countries would benefit from extensive development flexibilities allowing them to keep their support levels high. Applying this formula to cut its domestic farm support became more difficult for the United States after the introduction of its new Farm Bill in 2014, and politically impossible to accept because China and India have substantially increased their levels of domestic support since 2008 and would end up being allowed to maintain much of that increase while the United States would have to make cuts.

- **Development flexibilities for advanced developing countries.** This is an issue in both the Agriculture and NAMA negotiations. The WTO does not differentiate between low-income and high-income developing countries under its principle of "Special and Differential Treatment" (SDT) that provides flexibilities for developing countries in all aspects of WTO rules. However, as some developing countries, such as China, India, and Brazil, have become more advanced economically and now exercise a significant commercial influence on global markets, the United States and other developed countries have questioned the justification for continuing to provide them with the kinds of flexibilities that they feel should be reserved for low-income and small developing countries. Most developing countries on the other hand, including in particular India, are refusing to give up the development flexibilities that were on the table in 2008 and to abandon the principle that all developing countries must be treated equally and are entitled to full SDT. In that context, demands from India and others for the maintenance of the Special Safeguard Mechanism (SSM) for developing countries in Agriculture has recently become the focus of deep disagreement, most particularly with the United States. The SSM would allow developing countries to raise their agricultural tariffs above their pre-Doha bound rates and, in effect, nullify any market access concessions that they had given.

It has been felt by many for some time that the only way around these difficulties is to reduce the ambition of the market access component of the Doha Round to a level where none of the key Members would face political difficulties domestically in passing legislation to accept the results. That could imply, for example, that there would be minimal reductions in bound rates of tariffs and domestic agricultural support, and perhaps no reductions in applied rates, which would not warrant offering extensive flexibilities for developing countries to help them manage their transition to more open access to their markets. It could imply also that there probably would be no results from other parts of the Doha Round, such as the Rules negotiations. The Round then would be concluded with a face-saving result that would leave the multilateral system of market access and rules largely unchanged.

Such a result no doubt would damage the reputation and value of the WTO, although arguably less so than continuing with the current stalemate. It likely would weaken the WTO's other core functions, including crucially its dispute settlement system, and leave the way open for bilateral and regional agreements, such as the Trans-Pacific Partnership (TPP), the Transatlantic Trade and Investment Partnership (TTIP), and the Trade in Services Agreement (TISA), to dominate the management of global trade and investment relations. There would be damaging consequences for any WTO Member that was left out of these other integration agreements, particularly low-income developing countries.

At the same time, whether certain key Members, notably India, are prepared to compromise and accept even a low-ambition result of this kind is unclear. India's obstruction of the conclusion of the Trade Facilitation Agreement in 2014 showed how far it was prepared to go in blocking consensus, even when it was effectively isolated within the WTO membership and even when its national commercial interests were not threatened by the result. It could repeat that performance if it felt that the development promise of the Doha Round was being compromised by a "small" result and that it might receive praise from other developing countries for adopting such a principled stand as the "blame game" between North and South took place.

In sum, it is very hard to see what options are now available to salvage a meaningful result from the Doha Round. The OECD Ministerial meeting might provide guidance on the way forward, although without the full involvement of the United States, the provision of such guidance appears less likely.

Update on the WTO Government Procurement Agreement

On June 3, 2015, the World Trade Organization's (WTO) Committee on the Government Procurement Agreement (GPA) held its semi-annual meeting to review the status of accessions, which are growing in number and, in some cases, proceeding quickly. The key developments from the meeting are as follows:

China's accession. For the time being, the main focus of attention in the GPA Committee is China's unfinished accession process and the United States' insistence that China's list of covered entities include more state-owned

enterprises (SOEs). Bilateral discussions between the United States and China the day before the meeting set the stage for a constructive exchange. The United States stated that it was encouraged by China's willingness to continue negotiating and to find solutions that would allow China to accelerate its accession process. Nonetheless, at the meeting, the United States and several other GPA Participants reiterated their view that China's latest (5th) revised GPA accession offer that was submitted on December 22, 2014 fell short in several areas, notably in (i) its coverage of sub-central entities and SOEs; and (ii) its proposed thresholds for procurement contracts to be covered by the GPA disciplines.

The United States and other Parties consider China's proposed coverage of its SOEs to be inadequate. In its latest offer, China more than doubled the number of SOEs that it would subject to GPA rules to a total of 22 SOEs. However, most of those SOEs are academic, medical or cultural bodies which, while important in their own terms, are not considered by other Parties to the GPA to have particularly significant procurement activities. The most important additions to the list, compared with China's previous offer, are the Agricultural Development Bank of China, China Post Group and the China Central Depository and Clearing Company. These three SOEs are among the largest in China, and their procurement activities are significant to other GPA Parties. However, the procurement activities of these three SOEs are nowhere near significant enough to satisfy the other GPA Parties that their inclusion alone would provide access to a reasonable share of China's enormous procurement market.

China has omitted from its offer all of the top 117 SOEs that are managed by the State-owned Assets Supervision and Administration Commission (SASAC). This omission is causing the most concern to the GPA Parties. Among the SOEs managed by SASAC are China's major petroleum, petrochemical, power investment, generation, and grid companies. SASAC also manages China's state-owned telecommunications, motor manufacturing, heavy engineering, machinery, iron, steel, shipping, rail, aviation, banking, and insurance companies. Together, these companies account for a large share of the Chinese economy and the bulk of its government procurement market. The key GPA Parties negotiating with China cannot expect to have all of those enterprises covered by China's offer, but they do expect China to include some of them. We understand that the Parties are particularly interested in the inclusion of enterprises active in high-tech manufacturing and telecommunications services.

So far there is no indication that China is prepared to compromise on the coverage of SOEs in its GPA accession offer. However, China is undertaking a major overhaul of its SOEs to tackle widespread inefficiency and corruption and, where possible, to create "national champions." Once this process is complete (we understand that it could be this summer) China might become more flexible regarding the inclusion of more entities in a further revised offer. At the meeting, China stated that it would continue to negotiate constructively with other Participants and that it wanted to accelerate its accession process.

Australia's accession. Australia informed the Committee that it is formally launching its bid to accede to the GPA and that it plans to submit an initial market access offer for accession within the coming months, which will trigger the negotiations on the country's entry terms.

Other developments. Also at the meeting on June 3, the GPA Committee accepted requests from Costa Rica and Thailand for observer status, thus bringing the number of observers to 31 (of which 12 are actively negotiating their accession). Montenegro and New Zealand stated that their domestic ratification processes were now complete and that they would be submitting their instruments of acceptance of the GPA shortly. Ukraine, Tajikistan, Moldova and the Kyrgyz Republic updated the Committee on the statuses of their new or revised offers in their accession processes. Korea and Switzerland, who already are GPA Parties, updated the Committee on their domestic processes to ratify the revised GPA, which came into force in April 2014.

No particular mention was made in the Committee meeting of the five WTO Members – including the Russian Federation – which have GPA accession provisions in their WTO accession protocols but have not begun accession proceedings. However, reference was made to the statuses of these five Members in the Secretariat press release issued after the meeting, and there may be pressure brought to bear on these Members at the Nairobi Ministerial Conference in December to begin their accession processes.

G-7 Leaders' Declaration Emphasizes TFA, Plurilateral Agreements Over Doha Round

From June 7 to 8, 2015, leaders of the Group of 7 (G-7) countries held a Summit meeting in Germany but did not offer any new initiative to help advance the Doha negotiations. Following the failure to achieve a breakthrough at the Organisation for Economic Co-operation and Development (OECD) Trade Ministers meeting last week, on which World Trade Organization (WTO) Director-General (DG) Roberto Azevêdo commented that he had "not heard anything new," prospects for meeting the July deadline to complete the Bali Work Programme seem dim, and even the prospect of success at the 10th WTO Ministerial Conference in December could be in doubt. The Declaration issued by the G-7 leaders following the Summit suggests that political attention has shifted away from the Doha Round and seems to eliminate any hope that the G-7 might intervene to save the negotiations by making new concessions to advanced developing countries such as China and India.

The G-7 Declaration devotes just two sentences to the Doha negotiations, calling for progress but offering nothing new to suggest how the current deadlock in Geneva might be broken. The Declaration goes on to state: "We look forward to the discussions at the G20 on ways to make the multilateral trading system work better, based on input from the WTO." However, the next G-20 Leaders Summit is not until mid-November, which would be too late to salvage a result from the Doha Round this year. In addition, the language used by the G-7 suggests a desire to discuss the functioning of the WTO more generally, rather than the Doha Round. Ideas have been circulating in Geneva and country capitals regarding how the WTO might be re-engineered to operate more efficiently, particularly after the experience of India's obstruction of the Trade Facilitation Agreement (TFA) last year. These ideas may be what the G-7 has in mind as it prepares for future engagement with advanced developing countries in the G-20.

Instead of addressing Doha, the Declaration states that "[t]he [WTO] focus in 2015 should in particular be on the entry into force of the WTO Trade Facilitation Agreement (TFA)", for which domestic ratification is proceeding very slowly. Australia notified the WTO on June 8 that it had ratified the TFA, but that brings the total to date to only 7 WTO Members, versus the target of 108 ratifications that are required for the TFA to enter into force. Another 40 to 50 industrialized countries and progressive developing countries likely will ratify the TFA by the time of the Nairobi Ministerial Conference in December. However, there is no sign that opinion leaders in the developing world, such as India and South Africa, have made the TFA a domestic legislative priority. There also is no sign that the bulk of low-income developing countries are prepared to move ahead without receiving stronger commitments of increased foreign aid and assistance to help them implement the TFA. Failure of the TFA to enter into force would create a major crisis over the functioning of the WTO and eclipse any likelihood of completing the Doha negotiations.

The G-7 Declaration devotes considerably more attention to urging progress in bilateral, regional and plurilateral negotiations that are underway parallel to the Doha negotiations. In particular, the Declaration cites the Information Technology Agreement (ITA), the Environmental Goods Agreement (EGA), the Trade in Services Agreement (TiSA), the Trans-Pacific Partnership (TPP), and the Transatlantic Trade and Investment Partnership (TTIP). Regarding the ITA, for example, the Declaration states that "[w]e will work to conclude the expansion of the ITA without delay." The implication of this statement is that these initiatives have attained political priority for the G-7.

DG Azevêdo will continue his consultation process in Geneva, focusing on the market access components of the Doha Round. He can bring nothing new to the negotiating table from events of the past week. If anything, there seems to have been a hardening of attitudes on the part of key Members. The United States stated in Paris at the OECD meeting, for example, in the strongest terms that it has used so far, that consensus must be found quickly on a recalibrated, much lower level of ambition, or the negotiations will fail. In contrast, the Indian and South African trade ministers repeated their longstanding demands for greater concessions in agriculture from industrialized countries. These requests were coupled with demands for enhanced "special and differential treatment" flexibilities for all developing countries in all areas of the negotiations – demands which the United States and other countries already have rejected. At present, it is difficult to see how DG Azevêdo will be able make headway.

Click **here** for a copy of the G-7 Leaders' Declaration.

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