US & Multilateral Trade Policy Developments

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Contents

US General Trade Policy Highlights

Border-Adjustable Taxes under the WTO Agreements

This report summarizes the World Trade Organization (WTO) disciplines on border adjustable internal taxes and provides a general framework for assessing any future United States corporate tax plan that incorporates a border adjustment. In the coming weeks, Republican leadership in the US House of Representatives will introduce legislation to reform the corporate tax code, converting the current worldwide income tax into a "destination-based" tax on corporations' US sales (including sales of imports), accompanied by a "border adjustment" that excludes export sales from the tax. The Republican proposal would be a radical departure from the current US corporate income tax system, essentially imposing an internal tax on imported goods for the first time in the United States, while permitting a rebate or exemption for US exports. Such a plan differs from President-elect Trump's apparent proposals to impose a steep border tax or tariff on imports into the United States from domestic companies that invest abroad, though many have speculated that the Republican tax proposal could serve as a final compromise between Congress and President-elect Trump on the issue of "outsourcing" and border taxes.

The details of the proposed tax plan are not publicly available – the current plan is only summarized in a House Republican "blueprint"[1] and legislative text reportedly has not been finalized – but the border adjustment proposal has already become one of the most hotly-debated elements of the Republican tax reform proposal. A significant part of that debate has centered on whether the tax plan would be consistent with WTO rules on border adjustable taxes, with some commentators and business groups already expressing serious concerns that the Republican proposal would violate the United States' international obligations and thus expose US exports to WTO-sanctioned retaliation.

A border adjustable tax raises complex international trade law issues that may be summarized as follows, based on what we know of the Republican proposal:

- First, WTO rules in general permit border adjustments on "indirect" taxes, which the WTO Agreement on Subsidies and Countervailing Measures ("SCM Agreement") defines as "sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges."

- Second, in order for a U.S. tax measure to be generally permitted under WTO rules, it also (i) must be levied on imported products at a rate or amount no higher than the rate/amount levied on domestically produced "like" products (to be consistent with GATT Articles II and III); and (ii) must provide a border adjustment on exports that is no greater than the amount of tax actually levied or owed on those goods (to be consistent with Article 3.1 of the SCM Agreement). Publicly available descriptions of the Republican proposal raise concerns that it would permit certain deductions (and thus establish lower tax rates) for domestically-produced goods, while denying the same deductions for the same imported products.

- Third, in order to avoid designation of a border adjustment as a prohibited export subsidy, based on item (e) of the SCM Agreement's Illustrative List of export subsidies, the proposed tax must not be a "direct tax", as

[1] *A Better Way: Our Vision for a Confident America (Tax)*, at 28 (Jun. 24, 2016) **http://abetterway.speaker.gov/_assets/pdf/ABetterWay-Tax-PolicyPaper.pdf** ("The cash-flow based approach that will replace our current income-based approach for taxing both corporate and non-corporate businesses will be applied on a destination basis. This means that products, services and intangibles that are exported outside the United States will not be subject to U.S. tax regardless of where they are produced. It also means that products, services and intangibles that are imported into the United States will be subject to U.S. tax regardless of where they are produced.").

defined in the Agreement. The Republican proposal might pass this test if it is deemed to be, for example, a "subtraction method" VAT, but at this stage there is insufficient information to answer this question. If the tax does not clearly fall within the SCM Agreement's definition of "direct tax," then it could be permitted where the tax is found (i) to be "borne by" or directly levied on a product; and (ii) to ensure "trade neutrality" between imported and domestically-produced goods.

Until the text of the tax legislation is published, it is not possible to make definitive conclusions with respect to these issues. Nevertheless, the following analysis should prove useful in assessing whether the final Republican proposal risks future WTO disputes and, in the case of US non-compliance with an adverse dispute settlement ruling, eventual retaliation by US trading partners.

What is a "Border Adjustable" Tax?

A "border adjustable" tax as understood under WTO rules is a domestic ("internal") tax on the sale of a product that may be adjusted at the border by levying the tax on imports and rebating or exempting it on exports. Border adjustable taxes are sometimes equated with "indirect" taxes, *i.e.*, taxes borne directly by a product, although, as discussed below, the equation of border adjustable tax with indirect tax is imprecise. Indirect taxes are to be distinguished, and treated differently under WTO rules, from "direct" taxes like income or profit taxes. The economic theory underlying this distinction is that indirect taxes are passed through to the price of the product whereas direct taxes have a more complex relationship to price. The most common form of border adjustable tax is the VAT, which typically is levied on the customs value of a product plus duties and is collected on imports at the time of customs clearance.[2] Many WTO Members, including the EU (at standard rates varying among member states from 15% to 27%), utilize a border adjustable VAT – a fact that some Republicans have cited to justify the new US corporate tax proposal.

What Do WTO Rules Say about Border Adjustable Taxes?

WTO rules allow for the adjustment of certain types of internal taxes at the border under certain conditions. The main conditions are summarized below.

1. The tax must be applied equally to imports and "like" domestic products

Any domestic tax levied on imported products must, regardless of whether it is border adjustable, be done so at a rate no higher than the rate levied on domestically produced "like" (similar) products. The general rule of GATT Article II:1(b) is that, other than customs duties, imports must "be exempt from all other duties or charges of any kind." However, GATT Article II:2(a) allows a government to impose at the time a product crosses its border "a charge equivalent to an internal tax imposed… on a like domestic product," as long as the internal charge is imposed consistently with the "national treatment" principle of GATT Article III.[3] The imposition of an internal tax at the border will therefore be consistent with the GATT non-discrimination rules where it conforms to the provisions of GATT Article III:2, *i.e.*, that the imported good is "not subject, directly or indirectly to internal taxes or other internal charges of any kind <u>in excess of those applied directly or indirectly to like domestic products</u>" (emphasis added).

The WTO Panel in *US – FSC (Article 21.5 – EC)* clarified that the national treatment disciplines for internal taxes apply not only to "indirect taxes" like VATs but also to "direct taxes" like corporate income taxes: "nothing in the plain language of [Article III:4] specifically excludes requirements conditioning access to income tax measures

[2] A tax need not be applied economy-wide or at a uniform rate in order to be eligible for adjustment under WTO rules. VAT is typically applied economy-wide, but sometimes is applied at different rates on different products. Excise taxes apply only to certain products (usually gasoline, alcohol and tobacco) but they too may be adjusted at the border under WTO rules.

[3] This rule is confirmed by the Ad Note to GATT Article III, which states that "any internal tax or other internal charge, … which applies to an imported product and to the like domestic product and is collected… in the case of the imported product at the time or point of importation, is nevertheless to be regarded as an internal tax or other internal charge… and is accordingly subject to the provisions of Article III."

from the scope of application of Article III," so that "Article III:4 of the GATT 1994 applies to measures conditioning access to income tax advantages in respect of certain products."[4]

2. The tax must be "borne" by a product and not be "direct" (as defined by WTO rules)

WTO rules are based on the "destination" principle that taxes on products should be levied at their point of sale so as to align the tax treatment and conditions of competition of imported and domestic products in the marketplace. This principle has two general consequences for the permissibility of border tax adjustments under WTO rules:

- First, because traditional "credit-invoice" VATs, sales taxes and other consumption taxes are levied directly on products, they are undoubtedly eligible for border tax adjustment. Just as a country would not violate WTO non-discrimination principles by levying a domestic sales tax on imported products under GATT Article II (thereby establishing equal sales tax treatment between imported and domestic goods in the country), the country also may exempt exports from the sales tax, or rebate taxes paid, because the exported products will face equal treatment (*i.e.*, subject to the importing country's local sales tax) once they reach their final destination.

  The permissibility of border tax adjustments was first addressed by the 1970 GATT Working Party on Border Tax Adjustments, which concluded that "there was a convergence of views to the effect that taxes directly levied on products were eligible for tax adjustment … [and] … that certain taxes that were not directly levied on products were not eligible for tax adjustment", citing social security charges and payroll taxes as examples of the latter.[5] The Working Party's conclusion was applied in subsequent GATT/WTO work, including dispute settlement. For example, the GATT panel in *United States – Taxes on Petroleum and Certain Imported Substances* stated that the 1970 Working Party Report showed that "… the tax adjustment rules of the General Agreement distinguish between taxes on products and taxes not directly levied on products."[6] The un-adopted first GATT panel in the "Tuna-Dolphin" dispute concluded that "under the national treatment principle of [GATT] Article III, contracting parties may apply border tax adjustments with regard to those taxes that are borne by products, but not for domestic taxes not directly levied on products."[7]

  The principle also applies to WTO subsidy rules. GATT Article VI:4 prohibits the application of countervailing (anti-subsidy) duties for rebates or exemptions upon exportation of taxes "borne by the like product." Thus, the Note Ad Article to GATT Article XVI (on subsidies) states that "[t]he exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties of taxes in amounts not in excess of those which have been accrued, shall not be deemed to be a subsidy." That language is repeated in footnote 1 of the SCM Agreement, and is implied in the Agreement's "Illustrative List" of prohibited export subsidies (Item (g) and Footnote 60).

- Second, WTO export subsidy rules are distinct for (i) "indirect taxes," which are levied directly on products (border tax adjustment allowed) and (ii) "direct taxes" which apply to income, profits and factors of production (border tax adjustment not allowed). The SCM Agreement's "Illustrative List" of prohibited export subsidies expressly includes "[t]he full or partial exemption remission, or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises" (emphasis added). Footnote 58 of the SCM Agreement defines "direct taxes" as "taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property," and "indirect taxes" as

[4] Panel Report, *US – FSC (Article 21.5 – EC)*, paras 8.142 and 8.144.

[5] GATT (1970) *Report of the Working Party on Border Tax Adjustments, adopted on 2 December.* (L/3464), paragraph 14, *available at* **https://www.wto.org/gatt_docs/English/SULPDF/90840088.pdf** ("1970 WPR").

[6] GATT Panel Report, United States – Taxes on Petroleum and Certain Imported Substances, L/6175, adopted 17 June 1987, BISD 34S/136 , para 5.2.4.

[7] GATT Panel Report, United States – Restrictions on Imports of Tuna, DS21/R, DS21/R, 3 September 1991, unadopted, BISD 39S/155, para. 5.13 (emphasis added).

"sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges" (emphasis added).

These two principles were addressed in a dispute settlement challenge by the EU to US tax legislation on the Domestic International Sales Corporation (DISC) and its successor the Foreign Sales Corporation/Extraterritorial Income Acts (FSC/ETI). The law exempted DISC income (*i.e.*, export sales income) from corporate income tax and allowed partial deferment of tax on that income received by shareholders. The United States contended that the tax advantages granted to the export activities of US companies through the DISC and the FSC/ETI were analogous to tax advantages enjoyed by EU companies as a result of (i) the EU's use of the "territorial" system of direct taxation that exempted income from "foreign economic processes" (*e.g.*, overseas production for exports)[8] and (ii) the ability of EU companies to exempt VAT from exports and levy it on competing imports. The WTO Panel and the Appellate Body examining the FSC/ETI measures disagreed with the United States, concluding that FSC/ETI payments constituted a prohibited export subsidy under Article 3.1(a) of the SCM Agreement. The Panel in particular noted that the payments were specifically the type of prohibited border tax adjustment subsidy found in item (e) of the SCM Agreement's the Illustrative List because they constituted "full or partial exemption remission, or deferral... of direct taxes... paid or payable by industrial or commercial enterprises."[9]

The Panel and Appellate Body rejected the US analogy between the FSC and EU "territorial" taxation because the WTO did not prescribe what kind of taxation system a Member should use but it did prohibit a Member, having chosen its taxation system (direct, world-wide taxation in the case of the United States), from exempting from that system foreign source income attributable to exports. That, the Panel said, constituted a prohibited export subsidy.

3. A permitted border tax adjustment must not subsidize exports

A border tax adjustment may not serve to subsidize exports in violation of Article 3 of the SCM Agreement.[10] As noted above, rebating or exempting indirect taxes such as VAT on exports is permitted under GATT Articles VI and XVI and the SCM Agreement and is therefore not treated as an export subsidy under WTO rules, as long as the rebate/exemption rate is not greater than the rate at which the tax is levied domestically. On the other hand, such a rebate/exemption will constitute a prohibited export subsidy under the SCM Agreement where it is in excess of the actual tax collected or due.[11] The SCM Agreement's Illustrative List covers various forms of these prohibited export subsidies.

Are Only Traditional Consumption Taxes Eligible for Border Adjustment?

It is often stated imprecisely that only traditional consumption taxes (*e.g.*, sales taxes or "credit-invoice" VATs paid by consumers and applied directly on products) are eligible for border adjustment under WTO rules. Although this may be a useful generalization, it should not be considered as definitive for several reasons. First, there has been no definitive Appellate Body ruling adopted by the Dispute Settlement Body on the general permissibility of border tax adjustments (*e.g.*, establishing an analytical framework for determining WTO-consistency). The *US-FSC* rulings, discussed above, assessed only one type of tax system (the US corporate income tax – a clear "direct tax"); all other guidance was developed before the WTO came into existence.[12]

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[8] Some European countries tax only income earned domestically, whereas the United States and Japan tax "worldwide" income of their residents, including corporations.

[9] Panel Report, *US-FSC*, para. 7.109.

[10] The SCM Agreement includes tax incentives in its definition of a subsidy and prohibits them if they are contingent on export performance. The legal standard for a prohibited export subsidy is met when the subsidy is "tied" to actual or anticipated exportation.

[11] *See, e.g.,* SCM Agreement, Annex I, Item (g) "The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption." *See also* Items (f), (h) and (i) and fn. 60.

[12] The GATT Panel decisions discussed above are not binding on subsequent WTO dispute panels. However, the Appellate Body has found that adopted GATT panel reports, while not binding, do "create legitimate expectations among WTO Members" and, thus "should be taken into account where they are relevant to any dispute". Unadopted panel reports have no legal status in the WTO system but may serve as useful guidance where relevant. Appellate Body Report, *Japan — Alcoholic Beverages II*, p. 14, 15.

Second, the 1970 Working Party Report and prior GATT Panel reports do not establish when a tax is "borne by" a product, nor do they provide a definitive list of the taxes that are expressly eligible or ineligible for border adjustment. The Working Party Report states only that "certain taxes that were not directly levied on products were not eligible for tax adjustment," including "social security charges whether on employers or employees and payroll taxes."[13] The Working Party also opted not to resolve a "divergence of views with regard to the eligibility for adjustment of certain categories of tax," such as "taxes occultes" and property taxes.[14] Third, the Working Party Report establishes that the underlying "philosophy behind [the GATT rules governing border tax adjustments] was the [e]nsuring of a certain trade neutrality" between imported and domestically-produced goods.[15] It is this neutrality, not the identity of the taxpayer (or type of tax), which WTO rules on border tax adjustments seek to protect.

Finally, the definitions of "direct tax" and "indirect tax" under Footnote 58 of the SCM Agreement, as well as the *US-FSC* Panel ruling, leave grey areas for corporate taxes that share characteristics of both forms of taxation. Potentially falling into this grey area is "business transfer tax" or "subtraction-method VAT," under which a uniform rate of tax is levied directly on corporate sellers (as opposed to products/consumers) based on their sales revenue, less purchases.[16] Such a system is widely accepted as VAT (thus fitting the reference to "value added" in the definition of "indirect tax" in Footnote 58), but it is also a tax on some corporate income (thus meeting the footnote's "direct tax" definition). This ambiguity could protect a border adjustable, subtraction-method VAT from the relatively straightforward analysis of the *US-FSC* Panel under item (e) of the SCM Agreement's Illustrative list of prohibited export subsidies. Furthermore, Japan has imposed a border adjustable, subtraction-method VAT since the early 1990s, without any serious interest or concern from other WTO Members[17] – a strong indication that the system does not raise the same WTO problems as the United States' FSC/ETI measures.

How Should One Assess the WTO-consistency of a Proposed US Border Adjustable Tax?

The lack of actual legislation on the proposed US border adjustable corporate tax precludes definitive conclusions about the proposal's consistency with the aforementioned WTO rules. However, it is possible that the proposal could pass muster at the WTO if it adheres to the following general rules.

- First, in order for the tax exemption or rebate on US exports to avoid being designated a prohibited export subsidy based on item (e) of the SCM Agreement's Illustrative List, the proposed corporate tax must not be a "direct tax", as defined in footnote 58 of the Agreement.[18] The Republican proposal might pass this test if it is, for example, a subtraction method VAT. If the tax at issue does not clearly fall within the definition of "direct tax" or "indirect tax" under footnote 58, then a WTO panel could apply the principles set out in the 1970 Working Party Report, examining whether the US tax (i) is "borne by" or directly levied on a product; and (ii) ensures "trade neutrality" between imported and domestically-produced goods.

- Second, if the US tax measure were determined to be generally permitted under WTO rules, it must also (i) be levied on imported products at a rate or amount no higher than the rate/amount levied on domestically produced "like" products (to be consistent with GATT Article III); and (ii) provide a border adjustment on export that is no greater than the amount of tax actually levied (to be consistent with Article 3.1 of the SCM Agreement). More information is needed to answer both of these questions, but a December 19, 2016 report from Senate Finance Committee ranking member Ron Wyden (D-OR), which describes the tax as "denying US

[13] 1970 WPR, para. 14 (emphasis added).

[14] 1970 WPR, para. 15.

[15] 1970 WPR, para. 9. *See also id.* at paras. 22 and 28.

[16] *See*, *e.g.,* OECD, *Consumption Tax Trends 2016*, *available at* **http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/consumption-tax-trends-2016_ctt-2016-en#.WFv0A9IrKUk#page1**

[17] *See* Reuters, *Japan's Consumption Tax Gets Taxing* , (Nov. 12, 2015),*available at* **https://tax.thomsonreuters.com/blog/onesource/vat-gst-management/japans-consumption-tax-gets-taxing/**

[18] The other two criteria would be met: (i) the tax would be "paid or payable by industrial or commercial enterprises"; and (ii) the border adjustment would be a "full or partial exemption remission, or deferral" of the taxes at issue.

companies a deduction for imported goods or services," raises some concerns under GATT Articles II and III because it indicates that the proposal would permit certain deductions (and thus establish lower tax rates) only for domestically-produced goods, while denying the same deductions for the same imported products.[19]

Once the legislative text is released, however, the two questions above may be answered through a simplified hypothetical assessment of the tax's effect on two identical U.S. companies selling and exporting the same product, with one company selling only imports and the other selling only its own domestically-produced like products. If the total tax paid by the former company is more than that paid by the latter, then the tax system would likely discriminate against imported goods in violation of GATT Articles II and III. If the total border adjustment provided to one of the companies is more than the tax collected (or otherwise due), then the system would likely be a prohibited export subsidy under Article 3 of the SCM Agreement.

Conclusion

At this stage, it is too early to conclude whether the Republican proposal for a border adjustable corporate tax raises significant concerns under WTO rules. However, our preliminary analysis above should assuage concerns that <u>any</u> such proposal would violate the United States' international obligations. That conclusion will depend on the text of the final legislation and an assessment of whether (i) the tax itself is among those for which border adjustments are permitted; (ii) the system imposes identical tax burdens on imported goods and domestically produced "like" products; and (iii) the border adjustment on exports is no greater than the actual amount of tax collected or due.

Finally, it is important to note that the appearance of WTO-inconsistency does not necessarily mean that the United States will abandon the border adjustment aspect of the Republican tax proposal, <u>or</u> that a WTO Member will challenge it. All policy measures of all Members, including the United States, are considered to be fully consistent with WTO rules until found otherwise in a WTO panel or Appellate Body ruling that is adopted by the WTO Dispute Settlement Body. Many WTO Members therefore adopt measures that they suspect – or know – to be problematic under WTO rules, but determine that such policies likely will not be challenged, including for diplomatic reasons, or that the legal risks are outweighed by political or economic considerations.

Senate Commerce Committee Holds Hearing to Consider Nomination of Wilbur Ross for Secretary of Commerce

On January 18, 2017, the Senate Committee on Commerce, Science, and Transportation held a confirmation hearing[20] for Mr. Wilbur Ross, President-elect Trump's nominee for Secretary of the Department of Commerce (DOC). At the hearing, Mr. Ross discussed his views on several trade policy issues including tariffs, trade remedies, and US trade agreements. Notably, Mr. Ross downplayed the Trump administration's desire to impose extreme protectionist measures such as across-the-board tariffs on imports, signaling instead that the Trump administration would more aggressively use traditional mechanisms such as trade remedies to combat alleged unfair trade practices. Mr. Ross also suggested on several occasions that the Trump administration's efforts to reduce the US trade deficit would be aimed primarily at increasing US exports, rather than restricting imports.

Mr. Ross's comments during the hearing may be summarized as follows:

- **Tariffs.** Mr. Ross downplayed the Trump administration's desire to impose across-the-board tariffs on imports and noted his personal view that such an approach might be detrimental to the US economy. When asked about President-elect Trump's apparent proposals to impose across-the-board tariffs, Mr. Ross implied that such statements are intended to increase the United States' negotiating leverage over trading partners such as Mexico: "In terms of the 35 percent [tariff] and some of the other statements, I think [President-elect Trump]

[19] Other US tax experts have described the Republican proposal in similar terms. *See*, *e.g.*, Ryan Ellis *Tax Reform, Border Adjustability, and Territoriality*, Forbes, Jan. 5, 2017 **http://www.forbes.com/sites/ryanellis/2017/01/05/tax-reform-border-adjustability-and-territoriality/#7d5a015f73d1** ("[A] VAT only allows deductions for business to business purchases. The House GOP tax reform plan, however, does allow for a business to deduct labor compensation paid (wages are then taxed on the individual level.").

[20] Click **here** to view the Senate Commerce Committee's record of the hearing.

has done a wonderful job preconditioning the other countries with whom we'll be negotiating that change is coming. The peso didn't go down 35 percent on accident…So I think he has done some of the work already that we need to do in order to get better trade deals, because we start out with the adverse party understanding that he or she is going to have to make concessions[.]"

When pressed further about President-elect Trump's rhetoric regarding import restrictions, Mr. Ross emphasized export promotion over protectionism, suggesting that the Trump administration's trade policies would be aimed at "stimulating exports, much more than just curtailing imports". However, Mr. Ross also stated that he views anti-dumping and countervailing duties as "essential" tools to discourage alleged unfair trading practices and noted that he would take an "activist" approach to trade remedies if confirmed as Secretary of Commerce.

- **Trade remedies and enforcement.** As noted above, Mr. Ross indicated that he intends to use the US trade remedy laws more aggressively than recent administrations, including by "self-initiating" investigations. While DOC's current practice is to initiate AD/CVD investigations as a result of a petition filed by a domestic interested party, DOC's regulations also allow for initiation of AD/CVD investigations at the "Secretary's own initiative." Mr. Ross stated that he would like DOC to use this authority "occasionally" in order to assist struggling US industries and to demonstrate the Trump administration's more aggressive enforcement posture to US trading partners. Mr. Ross also suggested that, in order to conclude trade remedy proceedings more expeditiously, DOC should be more reluctant to use its statutory authority to postpone determinations when such postponements are requested by foreign producers and exporters. In addition, Mr. Ross expressed concern about the alleged prevalence of anti-dumping and countervailing duty evasion and noted his desire for stricter enforcement in this area.

  In discussing the Trump administration's approach to trade remedies, Mr. Ross expressed particular concern about overcapacity in China's steel and aluminum industries and its impact on US steel and aluminum producers. Mr. Ross's comments raise the possibility that the Trump administration will explore creative uses of US trade remedy law to address overcapacity, including potential actions to address "third-country dumping" pursuant to Section 1317 of the Omnibus Trade and Competitiveness Act of 1988. Under Section 1317, USTR can request that a third country impose anti-dumping duties on a product on behalf of the United States, if USTR has a "reasonable basis" to believe that allegedly dumped sales of the product in the third country market are causing material injury to a US industry. Given Mr. Ross's comments, the Trump administration might consider taking such actions to address alleged overcapacity and dumping of products (*e.g.*, Chinese steel or aluminum) that do not actually enter the US market but arguably injure US producers by depressing global prices and impeding US exports.

- **Free trade agreements (FTAs).** Mr. Ross indicated that the Trump administration will likely aim to renegotiate the North American Free Trade Agreement (NAFTA) before pursuing other trade agreements, but he declined to provide specifics about the administration's objectives for the renegotiation of NAFTA. In response to questions from Sen. Tammy Baldwin (D-WI), Mr. Ross stated that the administration would consider renegotiating NAFTA provisions on government procurement, labor, and the environment, but he noted that all other aspects of NAFTA would be "on the table" for renegotiation as well.

  Mr. Ross also discussed his general views on trade agreements. In this regard, he reiterated his view that the United States should negotiate bilateral rather than plurilateral trade agreements because, in his opinion, "the more complex the negotiating environment, the less likely you are to get a sensible result." Mr. Ross also stated that (i) US FTAs should provide for "simultaneity of concessions" (*i.e.*, they should require US FTA partners to implement their commitments at the same time as the United States); and (ii) US FTAs should include a "sunset" provision or similar mechanism that would automatically require the re-opening of the agreement at regular intervals, particularly to address new non-tariff barriers that were not anticipated by earlier versions of the agreement.

- **Exports.** As noted above, Mr. Ross indicated during the hearing that the Trump administration would aim to stimulate US exports. When asked how this goal would be accomplished, Mr. Ross suggested that the administration would prioritize the elimination of "improper" foreign trade barriers such as technical barriers to trade, discriminatory sanitary and phytosanitary measures, and overly burdensome customs procedures. These comments appear to align with the Trump campaign's written promises to more aggressively enforce trade agreements and initiate WTO disputes more frequently.

Consistent with Mr. Ross's other post-election statements, his comments during the hearing suggest that US trade policy under the Trump administration might become more protectionist and enforcement-oriented while avoiding President-elect Trump's more extreme proposals. The Senate Finance Committee's confirmation hearing for USTR nominee Robert Lighthizer is expected to occur in the coming weeks, and could shed additional light on these issues.

Sen. Mike Lee Introduces Global Trade Accountability Act

On January 20, 2017, Sen. Mike Lee (R-UT) introduced the Global Trade Accountability Act (S.177), which provides for congressional review of the imposition of import duties and other unilateral trade measures by the Executive Branch. The bill would require the President to obtain congressional approval before imposing import restrictions under various US trade statutes, including Section 301 of the Trade Act of 1974 and the tariff modification authorities set forth in Trade Promotion Authority (TPA) and various free trade agreement (FTA) implementing bills. Though the bill is not expected to receive a vote in the near term, its introduction might discourage the Trump administration from imposing import restrictions under these and other rarely-utilized trade statutes.

Unilateral trade actions

The bill would apply to any future "unilateral trade action" taken by the Executive Branch under one of the following statutes: (i) Section 122 of the Trade Act of 1974; (ii) Section 301 of the Trade Act of 1974; (iii) Section 338 of the Tariff Act of 1930; (iv) Section 232 of the Trade Expansion Act of 1962; (v) the Trading With the Enemy Act; (vi) the International Emergency Economic Powers Act; (vii) Section 103(a) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA); (viii) any provision of law enacted to implement a US trade agreement; and (ix) Sections 406, 421, and 422 of the Trade Act of 1974. The bill defines unilateral trade actions to include import prohibitions, the imposition of or an increase in a duty, the imposition or tightening of a tariff-rate quota, the imposition or tightening of a quantitative restriction, or the suspension or withdrawal of FTA concessions with respect to an article.

Approval process

The bill would require the President to notify any proposed unilateral trade action to the Congress and to the Comptroller General of the United States, who heads the Government Accountability Office (a legislative branch agency that provides legal analysis, among other services, to the Congress). Upon receiving the President's notification (i) the majority leader of each House of Congress would be required to introduce a resolution within 3 legislative days stating that Congress approves the action proposed by the President; and (ii) the Comptroller General would be required to submit a report to Congress within 15 calendar days assessing the compliance of the President with the provision of law pursuant to which the unilateral trade action would be taken. Unless Congress then enacts the joint resolution of approval, the unilateral trade action proposed by the President cannot take effect. The bill would provide one exception to this rule: a unilateral trade action may take effect without congressional approval for one period of 90 calendar days if the President determines that the action is necessary because of a national emergency, an imminent threat to health or safety, or for national security.

Next steps

At this stage, it is unlikely that the Republican leadership will facilitate the advancement of the bill, as doing so would risk an early and unwanted political conflict between congressional Republicans and President Trump. However, if President Trump were to impose economically significant import restrictions pursuant to one of the statutes listed above, Sen. Lee's bill or similar legislation could gain political momentum. In the meantime, the introduction of the bill and the threat of congressional pushback it implies might discourage President Trump from taking such actions.

A copy of the bill is attached for reference.

President Trump Directs USTR to Withdraw United States from TPP

On January 23, 2017, President Trump sent a memorandum to the United States Trade Representative (USTR) directing USTR to "withdraw the United States as a signatory to the Trans-Pacific Partnership (TPP)" and to "permanently withdraw the United States from TPP negotiations".[21] In the memorandum, President Trump also states that "it is the intention of my Administration to deal directly with individual countries on a one-on-one (or bilateral) basis in negotiating future trade deals."

Given these directives, it is unlikely that the United States will participate in the TPP or in a similar, "re-branded" plurilateral negotiation under the current administration. Consequently, the future of the TPP will depend in part on the actions of the 11 remaining signatories. While the remaining signatories have not yet agreed on any particular course of action, the following scenarios are possible:

- **Implementation without the United States.** The remaining signatories (or a subset thereof) could attempt to implement the agreement without the United States. This approach might require substantive renegotiation of the TPP text, as some signatories might be unwilling to accept the existing text (and the concessions they have made thereunder) if the agreement no longer provides preferential access to the US market. Indeed, while Australia has recently advocated this "TPP-11" approach, other key signatories (notably Japan) have resisted the idea on the grounds that the "fundamental balance of interests" in the TPP will be lost without US participation.

  As it currently stands, Article 30.5 of the TPP provides that the Agreement will enter into force after it is ratified by at least six of the original signatories which together account for at least 85 per cent of the combined GDP of the original signatories in 2013. If the remaining 11 signatories choose to leave the existing TPP text intact and to consider that the United States is no longer an "original signatory" for purposes of Article 30.5, Japan would account for nearly half of the 2013 GDP of the remaining original signatories and Canada would account for approximately 16 percent. Thus, in this hypothetical scenario, ratification by both Japan and Canada (and by at least four other signatories) would be necessary for the Agreement to enter into force.

- **Bilateral agreements among the signatories.** Several TPP signatories have indicated that they will pursue bilateral agreements with the other TPP signatories as an alternative to the plurilateral agreement. Mexico has recently indicated that it will take this approach, as has Malaysia. Bilateral agreements among the TPP signatories could, and likely would, include some "WTO-plus" provisions modelled after those in the TPP. However, any such agreements would take considerable time to negotiate.

- **Delay and possible reconsideration.** If the remaining signatories decide to shelve the agreement, the TPP and US participation therein could be revisited in the future. Though President Trump is unlikely to reverse his current policy on the TPP, a future US President could seek to renegotiate the Agreement or submit the original Agreement to Congress for approval. However, President Trump's explicit instructions to remove the United States as a signatory have sown confusion about the United States' actual relationship to the Agreement and about the United States' ability to resume participation therein. For example, should a future US President seek to revive the TPP, the remaining TPP parties could argue that the United States is no longer a signatory and demand that the United States make additional concessions as a condition of its re-entry into the Agreement. Thus, President Trump's decision to withdraw the United States as a *signatory* has arguably reduced the United States' bargaining power should it eventually seek to re-enter the Agreement. By contrast, had President Trump simply refused to implement the TPP (but allowed the United States to remain a

[21] Click **here** to view the memorandum.

signatory), the United States arguably would have had greater leverage in any future efforts to revive the TPP process.

Though some TPP parties have, as noted above, discussed the possibility of continuing the TPP process without the United States, such an effort would face serious obstacles. The final TPP agreement reflects a delicate balance of the interests of 12 nations; this result took several years to achieve and required politically-sensitive concessions from each of the parties involved. The withdrawal of the Agreement's largest member has disrupted this delicate balance, and absent a change in US policy towards the TPP it is difficult to envision how it might be regained.

As noted above, President Trump's memorandum also references his administration's intention to negotiate future trade agreements on a bilateral basis. In this regard, the memorandum directs USTR to "begin pursuing, wherever possible, bilateral trade negotiations to promote American industry, protect American workers, and raise American wages." However, to date the Trump administration has not identified any countries with which they would be willing to negotiate a bilateral agreement, except for the United Kingdom. Moreover, recent comments from Wilbur Ross, President Trump's nominee for Commerce Secretary, suggest that the Trump administration will focus on the renegotiation of the North American Free Trade Agreement (NAFTA) before initiating new bilateral negotiations. Developments expected over the coming months, such as the Senate confirmation hearing for USTR nominee Robert Lighthizer and the release of the President's annual Trade Policy Agenda, could shed further light on these issues.

US Trade Representative Notifies TPP Depositary of US Withdrawal

On January 30, 2017, the Office of the United States Trade Representative (USTR) sent a letter to the Trans-Pacific Partnership (TPP) depositary to announce the United States' withdrawal from the TPP.[22] Acting USTR Maria Pagan sent the letter pursuant to President Trump's memorandum of January 23, 2017, which directed USTR to "withdraw the United States as a signatory to the Trans-Pacific Partnership". The relevant excerpt of the letter reads as follows:

> *This letter is to inform you that the United States does not intend to become a party to the TransPacific Partnership Agreement. Accordingly, the United States has no legal obligations arising from its signature on February 4, 2016. The United States requests that New Zealand notify the other signatories.*

Because the TPP text does not contemplate a scenario in which a signatory seeks to withdraw from the Agreement prior to its entry into force, the precise implications of the Trump administration's recent actions – including their effect on the United States' status as a TPP signatory – are not yet clear. This issue will need to be resolved by the 11 remaining signatories, and could have important implications if the United States ever seeks to re-enter the Agreement. For example, if the remaining signatories consider that the United States is still a TPP signatory despite the Trump administration's actions, a future US President could proceed with the TPP ratification process by submitting implementing legislation for the existing Agreement. By contrast, if the remaining signatories decide that the United States is no longer a TPP signatory, they might insist that the United States negotiate the terms of its re-entry into the Agreement (and demand that it make additional concessions in the process). At this early stage, it is difficult to predict how the remaining signatories will resolve this issue and the broader question of how to proceed in light of the United States' withdrawal.

Following President Trump's decision to withdraw the United States from the TPP, some Trump administration officials have indicated that the administration is interested in negotiating bilateral free trade agreements with the other TPP signatories. White House Press Secretary Sean Spicer and White House National Trade Council Director Peter Navarro have both made statements to this effect in recent days. However, at this stage it remains unclear whether the Trump administration will actually pursue such initiatives, as the administration has yet to issue a formal, detailed statement on its trade policy agenda.

[22] Click **here** to view a copy of the letter.

Petitions and Investigations Highlights

Department of Commerce Issues Affirmative Final Determination in AD/CVD Investigations of Certain Biaxial Integral Geogrid Products from China

On January 5, 2017, the US Department of Commerce (DOC) announced its affirmative final determinations in the anti-dumping (AD) and countervailing duty (CVD) investigations concerning imports of certain biaxial integral geogrid products from China.[23] In its investigations, DOC determined that imports of the subject merchandise were sold in the United States at the following dumping margins and subsidy rates:

Producer/Exporter	Dumping Margin
BOSTD Geosynthetics Qingdao Ltd.	372.81%*
Taian Modern Plastic Co., Ltd.	372.81%*
China-Wide Rate	372.81%*

Producer/Exporter	Subsidy Rate
BOSTD Geosynthetics Qingdao Ltd.	15.61%
Taian Modern Plastic Co., Ltd.	56.24%
All Others	35.93%
Adverse Facts Available Companies	152.50%*

* Rates based on adverse facts available

The US International Trade Commission (ITC) is scheduled to make its final injury determination in this investigation on February 21, 2017. If the ITC makes an affirmative final determination that imports of the subject merchandise from China materially injure or threaten material injury to the domestic industry, DOC will issue AD and CVD orders. According to DOC, imports of the subject merchandise were valued at an estimated USD 9.2 million in 2014.

International Trade Commission Issues Affirmative Final Determinations in AD Investigations of Carbon and Alloy Steel Cut-to-Length Plate From Brazil, South Africa, and Turkey

On January 6, 2017, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of carbon and alloy steel cut-to-length plate from Brazil, South Africa, and Turkey that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value.[24] DOC determined in November 2016 that imports of the subject merchandise were sold in the United States at the following dumping margins: (i) 74.52 percent (for Brazil); (ii) 87.72 to 94.14 percent (for South Africa); and (iii) 42.02 to 50.00 percent (for Turkey).

As a result of the ITC's affirmative determinations, DOC will issue anti-dumping duty orders on imports of the subject merchandise from Brazil, South Africa, and Turkey. The ITC made negative findings with respect to critical circumstances for imports from Brazil and Turkey, and as a result, goods that entered the United States from Brazil and Turkey prior to September 22, 2016 (the date of DOC's affirmative preliminary determinations) will not be subject to retroactive anti-dumping duties.

The ITC's public report on these investigations will be made available by February 9, 2017.

[23] Click **here** to view the DOC fact sheet on the investigation.

[24] Click **here** to view the ITC's press release on the investigations.

Department of Commerce Issues Final Determinations in AD/CVD Investigations of Certain New Pneumatic Off-Road Tires from India and Sri Lanka

On January 4, 2017, the US Department of Commerce (DOC) announced its affirmative final determinations in the countervailing duty (CVD) investigations concerning imports of certain new pneumatic off-the-road tires from India and Sri Lanka, and its negative final determination in the anti-dumping duty (AD) investigation concerning imports of the same from India.[25] In the CVD investigations, DOC determined that imports of the subject merchandise received countervailable subsidies of 4.09 to 5.36 percent (for India) and 2.18 percent (for Sri Lanka). In the AD investigation, DOC determined that the mandatory respondents from India had not sold the subject merchandise into the United States at less than fair value. As a result, the AD investigation has been terminated.

The US International Trade Commission (ITC) is scheduled to make its final injury determinations in the CVD investigations on February 17, 2017. If the ITC makes affirmative final determinations that imports of the subject merchandise from India and/or Sri Lanka materially injure or threaten material injury to the domestic industry, DOC will issue CVD orders. According to DOC, imports of the subject merchandise from India and Sri Lanka were valued at an estimated USD 156.2 million and 66.6 million, respectively, in 2015.

International Trade Commission Issues Affirmative Final Determination in AD Investigation of Large Residential Washers from China

On January 10, 2017, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of large residential washers from China that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value.[26] DOC determined in December 2016 that imports of the subject merchandise were sold in the United States at the following dumping margins: (i) 32.12 percent (for imports from Nanjing LG-Panda Appliances Co.); (ii) 52.51 percent (for imports from Suzhou Samsung Electronics Co.); and (iii) 44.28 percent (for the China-wide entity).

As a result of the ITC's affirmative final determination, DOC will issue an anti-dumping duty order on imports of the subject merchandise from China. According to DOC, imports of washing machines from China were valued at an estimated USD 1.1 billion in 2015.

The ITC's public report on this investigation will be made public by February 15, 2017.

Department of Commerce Issues Affirmative Final Determination in CVD Investigation of Ammonium Sulfate From China

On January 11, 2017, the US Department of Commerce (DOC) announced its affirmative final determination in the countervailing duty (CVD) investigation concerning imports of ammonium sulfate from China.[27] In its investigation, DOC determined that imports of the subject merchandise from China received countervailable subsidies of 206.72 percent.

The merchandise covered by the investigation is ammonium sulfate in all physical forms, with or without additives such as anti-caking agents. Ammonium sulfate, which may also be spelled as ammonium sulphate, has the chemical formula $(NH_4)_2SO_4$. Ammonium sulfate is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 3102.21.0000.

The US International Trade Commission (ITC) is scheduled to announce its final injury determination in this investigation on February 23, 2017. If the ITC makes an affirmative final determination that imports of ammonium sulfate from China materially injure or threaten material injury to the domestic industry, DOC will issue a CVD order. According to DOC, imports of ammonium sulfate from Chine were valued at an estimated USD 62 million in 2015.

[25] Click **here** to view the DOC fact sheet on the investigation.

[26] Click **here** to view the ITC's press release on the investigation.

[27] Click **here** for the DOC fact sheet on the investigation.

Department of Commerce Issues Affirmative Final Determinations in AD/CVD Investigations of Certain Carbon and Alloy Steel Cut-to-Length Plate from China

On January 18, 2017, the US Department of Commerce (DOC) announced its affirmative final determinations in the anti-dumping (AD) and countervailing duty (CVD) investigations concerning imports of certain carbon and alloy steel cut-to-length plate (CTL plate) from China. In its investigations, DOC determined that imports of the subject merchandise from China were sold in the United States at a dumping margin of 68.27 percent and received countervailable subsidies of 251 percent. As a result of the final affirmative determinations, DOC will instruct US Customs and Border Protection (CBP) to collect cash deposits equal to these final rates.

The products covered by the investigation are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances. The subject products are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The US International Trade Commission (ITC) is scheduled to make its final injury determination in this investigation on or around March 3, 2017. If the ITC makes an affirmative final determination that imports of CTL plate from China materially injure or threaten material injury to the domestic industry, DOC will issue AD and CVD orders. According to DOC, imports of CTL plate from China in 2015 were valued at an estimated USD 70.3 million.

The DOC fact sheet on these investigations is attached for reference.

Department of Commerce Issues Affirmative Final Determinations in AD/CVD Investigations of Truck and Bus Tires from China

On January 23, 2017, the US Department of Commerce (DOC) announced its affirmative final determinations in the anti-dumping (AD) and countervailing duty (CVD) investigations of imports of truck and bus tires from China.[28] In its investigations, DOC determined that imports of truck and bus tires from China were sold in the United States at the following dumping margins and subsidy rates:

Producer/Exporter	Dumping Margin
Prinx Chengshan (Shandong) Tire Co., Ltd.	9.00 percent
Non-Selected Separate Rate Respondents	9.00 percent
China-Wide Rate	22.57 percent

Producer/Exporter	Subsidy Rate
Double Coin Holdings Ltd.	38.61 percent
Non-Selected Separate Rate Respondents	65.46 percent
China-Wide Rate	52.04 percent

The products subject to the investigation are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by the investigation may be tube-type, tubeless, radial, or non-radial. The subject products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 4011.20.1015 and 4011.20.5020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.69.0020, 4011.69.0090, 4011.70.00, 4011.90.80, 4011.99.4520, 4011.99.4590, 4011.99.8520, 4011.99.8590, 8708.70.4530, 8708.70.6030, 8708.70.6060, and 8716.90.5059.

[28] Click **here** to view the DOC fact sheet on the investigations.

The US International Trade Commission (ITC) is scheduled to make its final injury determinations in these investigations on March 6, 2017. If the ITC makes affirmative final determinations that imports of truck and bus tires from China materially injure, or threaten material injury to, the domestic industry, DOC will issue AD and CVD orders. According to DOC, imports of truck and bus tires from China were valued at an estimated USD 1.07 billion in 2015.

US Department of Commerce Issues Affirmative Preliminary Determination in AD Investigation of Dioctyl Terephthalate from Korea

On January 27, 2017, the US Department of Commerce (DOC) announced its affirmative preliminary determination in the anti-dumping duty (AD) investigation of dioctyl terephthalate (DOTP) from Korea.[29] In its investigations, DOC preliminarily determined that imports of the subject merchandise from Korea were sold in the United States at dumping margins ranging from 3.96 to 5.75 percent.

The merchandise covered by this investigation is DOTP, regardless of form. DOTP that has been blended with other products is included within the scope when such blends include constituent parts that have not been chemically reacted with each other to produce a different product. For such blends, only the DOTP component of the mixture is covered by the scope of the investigation. The subject merchandise is currently classified under subheading 2917.39.2000 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under subheadings 2917.39.7000 or 3812.20.1000.

DOC is scheduled to announce its final determination in this investigation on or around June 13, 2017. If DOC makes an affirmative final determination, and the US International Trade Commission makes an affirmative final determination that imports of DOTP from Korea materially injure or threaten material injury to the domestic industry, DOC will issue an AD order.

According to DOC, imports of DOTP from Korea were valued at an estimated USD 31.2 million in 2015.

US Department of Commerce Issues Affirmative Preliminary Determinations in AD Investigations of Finished Carbon Steel Flanges from India, Italy, and Spain

On January 27, 2017, the US Department of Commerce (DOC) announced its affirmative preliminary determinations in the anti-dumping duty (AD) investigations of finished carbon steel flanges from India, Italy, and Spain.[30] In its investigations, DOC preliminarily determined that imports of the subject merchandise were sold in the United States at the following dumping margins:

Country	Dumping Margin
India	8.58 to 12.56 percent
Italy	79.17 to 204.53 percent
Spain	18.81 to 24.42 percent

The products covered by these investigations are carbon steel flanges that have undergone further processing after forging, including, but not limited to, beveling, bore threading, center or step boring, face machining, taper boring, machining ends or surfaces, drilling bolt holes, and/or de-burring or shot blasting. The subject products are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under subheadings 7307.91.5030 and 7307.91.5070.

[29] Click **here** to view the DOC fact sheet on the investigation.

[30] Click **here** to view the DOC fact sheet on the investigations.

DOC is scheduled to announce its final determinations in these investigations on or around April 12, 2017, unless the statutory deadline is extended. If DOC makes affirmative final determinations, and the US International Trade Commission makes affirmative final determinations that imports of finished carbon steel flanges from India, Italy, and/or Spain materially injure or threaten material injury to the domestic industry, DOC will issue AD orders.

According to DOC, imports of finished carbon steel flanges from India, Italy, and Spain in 2015 were valued at an estimated USD 90.6 million, 31 million, and 26.8 million, respectively.

Multilateral Policy Highlights

WTO Trade Ministers Hold "Mini-Ministerial" in Davos

Following an informal Ministerial gathering on the sidelines of the World Economic Forum in Davos, a core group of WTO trade Ministers has confirmed that the focus of their work in preparation for the next WTO Ministerial Conference (MC11) in December will be on fisheries subsidies and on a few limited issues in agriculture and services. There no longer seems to be any likelihood of new disciplines on fisheries subsidies opening the door to negotiations on other issues covered by the WTO Rules Negotiating Group, such as industrial subsidies or anti-dumping measures. The United States was represented in the Davos meeting but did not speak and it remains uncertain what approach the new US Administration will take towards WTO issues in general, and towards MC11 in particular.

At the Davos meeting, there was a great deal of concern among many of the trade Ministers present about the likely trade policies of the new US Administration. This took up a large part of the discussion. Compared to previous Davos meetings, the summing-up by the Chairman (Swiss Trade Minister Schneider-Amman) was unusual in that it stressed the need to strengthen the rules-based multilateral trading system, to work towards greater global integration and to eschew protectionism.[31] Those messages are not generally considered necessary at informal Ministerial gatherings of this sort, but this time they were clearly included as a deliberate response to some of the statements that trade Ministers have heard from Washington in recent months.

In view of uncertainty about the position the United States is likely to adopt towards negotiations in the WTO this year, trade Ministers felt it best to keep the objectives for MC11 narrow and relatively unambitious. Even so, several of the issues covered in the Chairman's summing-up could be controversial in Washington.

Above all, several advanced developing countries led by India pressed in Davos for "special and differential treatment" to be recognized throughout all the work of the WTO, including in negotiations for MC11. The United States has already shown that it is not willing to accept lower levels of engagement by advanced developing countries in WTO disciplines. The new US Administration seems likely to be even more opposed to providing this kind of flexibility. In that case, the deadlock over development flexibilities that has prevailed now for several years in the WTO between the United States and the European Union on the one hand, and India, China and other advanced developing countries on the other hand, and that lay at the center of the collapse of the Doha Round, seems likely to continue and could prevent any negotiated outcomes at all from materializing for MC11.

Beyond this difference of view over the applicability of special treatment for advanced developing countries, there are other issues that could complicate negotiations this year:

Proponents of disciplines on fisheries subsidies, such as the European Union, have pressed their case in part on environmental grounds, to meet objectives set out by the 2012 UN Conference on Sustainable Development. It is not clear whether the new US Administration will continue to support those aims, or at least to attach any priority to them.

China's agricultural subsidies are now being challenged by the United States through dispute settlement and in those circumstances it would appear to be difficult to make headway in negotiating lower levels of agricultural support in the WTO, particularly before the end of this year.

Important elements of India's proposal for a WTO Agreement on trade facilitation in services relate to loosening visa rules for services providers, to which the United States has already stated its opposition and which the new US Administration may find particularly difficult to accept. The issue of visa fees is also subject to current dispute settlement proceedings between India and the United States.

Overall, the assessment from some of those present in Davos was gloomy. Meetings last year to prepare for MC11 made little headway. Prospects are that progress this year could be even more difficult.

[31] Click **here** to view a copy of the Chairman's summing-up in Davos.

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